

TITLE 16

REVENUE AND FINANCE

Chapter 1 ANNEXATION FEE

16-1-1. Annexation Fee.

- (a) No annexation to Sandy City shall be considered until such time as the applicant(s) shall have paid to the City an annexation fee. The said fee has been established to cover costs incurred by the City for research and other services specifically rendered as the result of the request for annexation.
- (b) The City Council may, upon a showing of good cause therefor, waive the annexation fee as set forth. Such waiver may be accomplished by motion duly made and passed by the City Council in open session thereof.

16-1-2. Amount of Fee.

The amount of the annexation fee to be charged in connection with a petition for annexation to Sandy City shall be established by resolution of the Sandy City Council.

Chapter 2 SALES AND USE TAX

16-2-1. Title.

This chapter shall be known as the "Uniform Local Sales and Use Tax Ordinance" of the City of Sandy.

16-2-2. Purpose.

The Utah State Legislature has authorized the counties and municipalities to enact sales and use tax ordinances imposing a fifty-eight/sixty-fourths of one percent tax thus enabling this municipality to increase its local option sales and use tax to such percent.

It is the purpose of this ordinance to conform the Uniform Local Sales Use Tax of the municipality to the requirements of the Uniform Local Sales and Use Tax law of Utah, Chapter 9 of Title 11, Utah Code Annotated 1953, as currently amended, by repealing the previously enacted Uniform Local Sales and Use Tax ordinance of this municipality and re-enacting by this ordinance a new Uniform Local Sales and Use Tax ordinance.

16-2-3. Effective Date. Continuance of former ordinance.

This ordinance shall become effective as of 12:01 o'clock a.m., July 1, 1986. The provisions of the previously enacted Uniform Local Sales and Use Tax ordinance of the municipality which is repealed hereby and which are in conflict herewith shall continue effective until 12:00 o'clock midnight, June 30, 1986. The provisions of this ordinance which are not in conflict with said former ordinance shall be deemed to be a continuation thereof and any rights, duties and obligations arising thereunder shall not in any way be deemed abrogated or terminated.

16-2-4. Sales Tax.

- (a) (1) From and after the effective date of this ordinance, there is levied and there shall be collected and paid a tax upon every retail sale of tangible personal property, services and meals made within the municipality at the rate of fifty-eight/sixty-fourths of one percent (58/64%).
- (2) For the purpose of this ordinance, all retail sales shall be presumed to have been consummated at the place of business of the retailer unless the tangible personal property sold is delivered by the retailer or his agent to an out-of-state destination. In the event a retailer has no permanent place of business in the state, or has more than one place of business, the place or places at which the retail sales are consummated shall be as determined under the rules and regulations prescribed and adopted by the State Tax Commission. Public utilities as defined by Title 54, Utah Code Annotated, 1953, shall not be obligated to determine the place or places within any

county or municipality where public utility services are rendered, but the place of sales or the sales tax revenues arising from such service allocable to the City shall be determined by the State Tax Commission pursuant to an appropriate formula and other rules and regulations to be prescribed and adopted by it.

- (b) (1) Except as hereinafter provided, and except insofar as they are inconsistent with the provisions of the Uniform Local Sales and Use Tax Law of Utah, all of the provisions of Chapter 15, Title 59, Utah Code Annotated, 1953, as amended, and in force and effect on the effective date of this ordinance, insofar as they relate to sales taxes excepting Sections 59-15-1 and 59-15- 21 thereof, and excepting for the amount of the sales tax levied therein, are hereby adopted and made a part of this ordinance as though fully set forth herein.
- (2) Wherever, and to the extent that in Chapter 15 of Title 59, Utah Code Annotated 1953, the State of Utah is named or referred to as the taxing agency, the name of this municipality shall be substituted therefor. Nothing in this subparagraph (2) shall be deemed to require substitution of the name of the municipality for the word "State" when that word is used as part of the title of the State Tax Commission, or of the Constitution of the State of Utah, nor shall the name of the municipality be substituted for that of the State in any section when the result of that substitution would require action to taken by or against the State Tax Commission in performing the functions incident to the administration or operation of this ordinance.
- (3) If an annual license has been issued to a retailer under Section 59-15-3 of the said Utah Code Annotated 1953, an additional license shall not be required by reason of this section.
- (4) There shall be excluded from the purchase price paid or charged by which the tax is measured:
 - (i) The amount of any sales or use tax imposed by the State of Utah upon a retailer or consumer;
 - (ii) Receipts from the sale of tangible personal property upon which a sales or use tax has become due by reason of the same transaction to any other municipality and any county in the State of Utah, under a sales or use tax ordinance enacted by that county or municipality in accordance with the Uniform Local Sales and Use Tax Law of Utah.

16-2-5. Use.

- (a) An excise tax is hereby imposed on the storage, use, or other consumption in this municipality of tangible personal property from any retailer on or after the operative date in the municipality at the rate of fifty- eight/sixty-fourths of one percent (58/64%) of the sales price of the property.

- (b) (1) Except as hereinafter provided, and except insofar as they are inconsistent with the provisions of said Uniform Local Sales and Use Tax Law of Utah, all of the provisions of Chapter 16, Title 59, Utah Code Annotated 1953, as amended and in force and effect on the effective date of this ordinance, applicable to use taxes, excepting the provisions of Section 59-16- 1 and 59-16-25 thereof, and excepting for the amount of the tax levied therein, are hereby adopted and made a part of this section as though fully set forth herein.
- (2) Whenever and to the extent that in said Chapter 16 of Title 59, Utah Code Annotated 1953, the State of Utah is named or referred to as the taxing agency, the name of this municipality shall be substituted therefor. Nothing in this subparagraph (2) shall be deemed to require the substitution of the name of the municipality for the word "state" when that word is used as part of the title of the State Tax Commission, or of the Constitution of the State of Utah, nor shall the name of the municipality be substituted for that of the State in any section when the results of that substitution would require action to be taken by or against the municipality or any agency thereof, rather than by or against the State Tax Commission in performing the functions incident to the administration or operation of this ordinance.
- (3) There shall be exempt from the tax due under this section:
- (i) The amount of any sales or use tax imposed by the State of Utah upon a retailer or consumer;
- (ii) The storage, use or other consumption of tangible personal property, the gross receipts from the sales of or the cost of which has been subject to sales or use tax under a sales or use tax ordinance enacted in accordance with the Uniform Local Sales and Use Tax Law of Utah by any other municipality and any count of the State.

16-2-6. Contract with State Tax Commission.

Heretofore, this municipality has entered into an agreement with the State Tax Commission to perform all functions incident to the administration or operation of the sales and use tax ordinances of the municipality. That contract is hereby confirmed and the mayor is hereby authorized to enter into such supplementary agreement with the State Tax Commission as may be necessary to the continued administration and operation of the local sales and use tax ordinance of the municipality as re-enacted by this ordinance.

16-2-7. Penalties.

Any person violating any of the provisions of this ordinance shall be deemed guilty of a class B misdemeanor, and upon conviction thereof, shall be punishable by a fine in an amount less than \$1,000.00 or imprisonment for a period of not more than six months, or by both such fine and imprisonment.

16-2-8. Severability.

If any section, subsection, sentence, clause, phrase, or portion of this ordinance, including but not limited to any exemption is for any reason held to be invalid or unconstitutional by the decision of any court or competent jurisdiction, such decision shall not affect the validity of the remaining portions of this ordinance.

Chapter 3 UTILITY REVENUE TAX

16-3-1. Imposition of Tax.

There is hereby levied upon the business of every person or company engaged in business in Sandy City, Utah, of supplying telephone service as public utilities, an annual license tax equal to six percentum of the gross revenue derived from the sale and use of the service of said utilities delivered from and after June 15, 1986, within the corporate limits of Sandy City, said fee being in addition to any current franchise fee, but in no event shall any combination of franchise fee and utility revenue tax exceed six percentum.

16-3-2. Definitions.

- (a) Gross revenue. "Gross revenue," as used herein, shall be construed to mean basic local exchange services revenue.
- (b) Basic local exchange service revenue. "Basic local exchange service revenue," as used herein, shall mean revenues received from the furnishing of telecommunications within Sandy City and access to the telecommunications network to either business, residential or other customers whether on a flat rate or measured basis, by means of an access line. Basic local exchange service revenues shall not include revenues obtained by the telephone public utility company from the provisions of terminal telephone equipment services (such as basic telephone sets, private branch exchanges and key telephone systems), or from other telephone equipment which is obtainable from both the telephone company and other suppliers.
- (c) Public utility services. "Public utility services," as used herein, shall mean the sale and use of basic local exchange of telephone service.

16-3-3. Remittance Date.

Within forty-five days after the end of each month in a calendar year, the public utility taxed hereunder shall file with the City Treasurer of Sandy City a report of its gross revenue derived from the sale and use of public utility service in Sandy City as defined herein, together with a computation of the amount of the tax due for that calendar month subject to said report.

Chapter 4 AMBULANCE SERVICE

16-4-1. Charges.

There shall be charged, for the services rendered by the Sandy City Fire Department ambulance, such rates as may be established by resolution of the Sandy City Council. The rates as set by resolution may be amended from time to time as may be determined by that body.

16-4-2. Disposition of Charge.

The money and sums received from this fee shall be paid into the general fund of the City.

16-4-3. Exemption.

No billing or charge shall be assessed to the Salt Lake County Commission or any municipality for ambulance service rendered at the request of their officers of falling within their respective jurisdictions.

16-4-4. Effective Date.

Such services as have been provided by the ambulance from March 19, 1977 shall be billed according to the regular policies of the billing department and the proceeds thereof shall be treated in the same respect and manner as heretofore set forth.

16-4-5. Duty of Treasurer.

The Treasurer shall have the power to receive any and all donations of money by any person, firm, or corporation made for the use and benefit of the ambulance service. Such sums shall be paid into the general fund.

Chapter 5 TRAINING AND RETIREMENT FUNDS

16-5-1. Training Fund.

There is hereby established a special fund within the General Fund of the City which shall be called "Training Fund." The purpose of the said fund is to receive monies to be used in the discretion of the City and according to State law for the purposes of training police officers and other law enforcement personnel. There shall be paid into the said fund the sum of \$1.00 for each citation or criminal complaint where a plea or verdict of guilty is entered in the Fifth Circuit Court, Sandy Department, Sandy, Utah.

16-5-2. Retirement Fund.

Further, it is hereby directed that in addition on the \$1.00 set forth hereinabove, and by way of a separate account, there shall be the sum of \$2.00 charged for each citation or criminal complaint wherein a plea or verdict of guilty is entered in the City Court in which such sum shall be paid to the Judges' Retirement Fund according to the laws of the State of Utah.

Chapter 6 CABLE TV FRANCHISE (REPEALED)

**REPEALED, ORD. 92-44, August 25, 1992. SEE NEW FRANCHISE GRANT, CH. 29,
TO INSIGHT CABLE.**

Chapter 7 FRANCHISE TO UTAH POWER AND LIGHT

16-7-1. Vesting of Rights, Privileges and Franchises in Utah Power and Light Company.

That all the rights, privileges and franchises granted, extended, confirmed or covered by or under the following ordinances of Sandy City, to-wit:

"An Ordinance granting to Utah Light and Traction Company, its successors and assigns, an electric light, heat and power franchise",

passed by the City Council of Sandy City, Utah, September 2, 1931, be and the same are hereby declared and ordained to be vested in the Utah Power & Light Company, its successors and assigns, and the conveyance by which said Utah Power & Light Company acquired said franchise from the Utah Light and Traction Company upon being filed with the City Recorder, is hereby approved and confirmed.

16-7-2. Acceptance of Ordinance by Utah Power & Light Company.

That the said Utah Power & Light Company shall within thirty (30) days from the passage of this ordinance file its acceptance thereof in writing with the City Recorder of Sandy City, otherwise this ordinance shall be null and void.

Chapter 8 USE OF PUBLIC FACILITIES BY PRIVATE PARTIES

16-8-1. Fee for Use of Public Facilities.

No person, organization, group or other entity shall use the public facilities as maintained by Sandy City and as set forth hereinafter without first paying such fees and making such deposits as are set forth herein. No such fee paid to the City pursuant to the provisions of this ordinance shall be refunded and the amount of deposit remaining, after subtracting the amount of the fee, shall be returned only upon a showing by the person, organization, group or entity using the public facility that the facility has been returned to its original condition with respect to the maintenance and cleanliness and preparation for use as it was when the public facility was assigned for use for the benefit of said user.

16-8-2. Priority of Use.

It shall be the policy of the City that the public facilities hereinafter enumerated shall be open for the use of the general public only at such times and upon such conditions as the public facilities are not required for use by the City itself. It shall be the policy of the City that the facilities located in the Sandy City Hall shall only be used by private parties during those times when such use shall not interfere with the official business and governmental functions of the City.

16-8-3. Amount of Fees.

- (a) The fees and deposits which shall be paid in compliance with the provisions of this chapter shall be established by resolution of the Sandy City Council. The term "half-day use" shall mean, for the purposes of this chapter, the use of the public facility for a period of not more than four (4) hours.
- (b) Deposits paid in connection with this chapter shall be refunded, less costs of use as established by resolution, when the user has left the facility in good condition.

Chapter 9 CEMETERY FEE

16-9-1. Cemetery Fees.

No cemetery grave site shall be assigned nor shall any right thereto be vested in anyone other than the City until such time as a fee as established by resolution of the City Council shall have been paid to the City. No such fee paid to the City pursuant to the provisions of this ordinance shall be refunded. The rights, title and property interest which are incident to the ownership of a cemetery grave site may be sold or transferred but any such sale or transfer shall only be valid when done in compliance with the rules and regulations as established by the City.

16-9-2. Transfer of Cemetery Grave Site.

In the event that a cemetery grave site shall be sold or transferred by a resident to a non-resident, the non-resident shall be required to pay to the City the difference between the cemetery grave site fee which had been paid by the resident and the cemetery grave site fee which would have been charged to the non-resident. In the event that the fee schedule as adopted by resolution of the City Council shall have been modified since the time of the original purchase of the cemetery grave site, the non-resident shall be required to pay the fee in accordance with the cemetery fee schedule as it existed at the time of the original purchase of the cemetery grave site. No service shall be rendered nor shall any use be allowed with regard to the cemetery grave site until such extra fees have been paid to the City by the non-resident assuming ownership, title, or property interest in the cemetery grave site.

16-9-3. Amount of Fees.

The City shall, in connection with the assignment of rights in any grave site or in connection with any burial service performed in the Sandy City Cemetery, charge a fee in such amounts as shall be found in the then current resolution as adopted by the Sandy City Council.

16-9-4. Use of Funds Transferred from the Cemetery Perpetual Care Trust Fund.

- (a) The City Council has determined that the need for the continued maintenance of a Cemetery Perpetual Care Trust Fund no longer exists and is, therefore, transferring the balance in such Perpetual Care Trust fund to the Capital Improvements Fund for expenditure for land, buildings and major improvements to be used exclusively for cemetery purposes.
- (b) The City shall appropriate such funds annually as shall be necessary to assure the continued maintenance and perpetual care of the Sandy City Cemetery.

Chapter 10 DEVELOPMENT FEE

16-10-1. Development Fee.

- (a) No request or application to develop residential, commercial or industrial property within the limits of Sandy City in accordance with the Sandy City Ordinances shall be considered or approved until such time as the applicant(s) shall have paid to the City a development fee in the amount as established by resolution of the City Council and in the manner as hereinafter set forth. No such fee paid to the City pursuant to the provisions of this ordinance shall be refunded if any steps have been taken by the administrative staff of the City to process the said request or application for development.
- (b) The development fee as above required shall not be assessed in connection with the development of public buildings within Sandy City.

16-10-2. Amount of Fees.

The amount of development fees to be charged in connection with residential, commercial and industrial development in Sandy City shall be established by resolution of the Sandy City Council and may be amended from time to time by resolution of that body.

16-10-3. Payment of Fees.

Payment of fees as required by this chapter shall be done in the following manner:

- (a) Subdivisions.
 - (1) Conceptual state - no portion of the fee.
 - (2) Preliminary phase - \$25.00 per lot
 - (3) Final phase - balance of development fees
 - (4) Hillside lots - an additional \$10.00 per lot may be assessed by the Planning Department at the preliminary phase or lots covered by hillside development regulations.
- (b) Multiple Unit Developments (apartments, condominiums, condominium conversions).
 - (1) Conceptual phase - no fee assessed
 - (2) Preliminary phase - \$25.00 per unit
 - (3) Final phase - balance of fees assessed
 - (4) Changes in site plan or other amendments to such developments shall require

the assessments of development fees as if no prior approval had been granted.

- (c) Commercial and Industrial.
 - (1) Conceptual phase - no fees
 - (2) Preliminary/Site Plan submittal - 25% of estimated development fee
 - (3) Final phase - balance of development fees.

16-10-4.

- (a) Preliminary approval and the payment of development fees in connection therewith shall be null and void one year from the date of such approval if the developer has not proceeded to obtain final development approval. The Planning Commission, upon a showing of hardship, shall have the right to extend the period for which preliminary approval and preliminary fee payments shall be honored. Such extension shall be granted for a period not to exceed six (6) months. In the event that any such preliminary approval shall become void under the provisions of this section, any fees paid in connection therewith shall be forfeited and a developer desiring to continue with such a project shall be required to submit a new application and shall be treated as if no application or preliminary approval had been previously granted.
- (b) Any appeal brought by a developer before the appropriate body shall be accompanied by an appeal fee in an amount to be established by resolution of the City Council.
- (c) All fees charged in connection with development approval shall be assessed at the rate currently in effect at the time the fee is to be paid. The amount of the fee shall not bear a relationship to the date on which the application was filed, but shall be assessed in conformance with the provisions of this chapter.

16-10-5. Approval Required.

No work shall be undertaken with regard to any development to which the provisions of this chapter apply until such time as the developer shall have complied with all provisions of this chapter and the ordinances of Sandy City as they relate to approvals, permits and payment of fees.

Chapter 11 DEVELOPMENT INSPECTION FEE

16-11-1. Development Inspection Fee.

- (a) No final approval to develop residential, commercial or industrial property within the limits of Sandy City in accordance with the Sandy City Ordinances and shall be given until such time as the applicant(s) shall have paid to the City a

development inspection fee in an amount as established by resolution of the City Council. No such fee paid to the City pursuant to the provisions of this ordinance shall be refunded if any steps have been taken by the several inspection departments of the City to inspect the development for which the request for final approval has been made.

- (b) The development inspection fee is established to provide for the adequate inspection of public improvements which may be installed in connection with new development in Sandy City, and would include, but not be limited to, the inspection of storm drainage systems, curbs, gutters, sidewalks, public streets and other public facilities as may be required as a part of the development.

16-11-2. Amount of Fees.

The amount of development inspection fees to be charged in connection with this chapter shall be established by resolution of the Sandy City Council and may be amended from time to time by resolution of that body. Fees shall be charged at the rate and in accordance with the resolution establishing such rates as may be in effect at the time of the final approval of the project for which the fee is assessed.

16-11-3. Approval Required.

No work shall be undertaken with regard to any development to which the provisions of this chapter apply until such time as the developer shall have complied with all provisions of this chapter and the ordinances of Sandy City as they relate to approvals, permits and payment of fees.

Chapter 12 REINSPECTION FEE

16-12-1. Reinspection Fee.

When an inspection of any type is requested and performed by any employee, officer or agent of Sandy City, the inspector shall indicate what corrections and modifications must be made to result in compliance with the ordinance, rules, and regulations of the City. In the event an inspector is requested to perform a reinspection to determine compliance with the ordinances, rules and regulations, and the inspector finds that items previously noted as being defective have remained defective and have not been corrected, the person requesting the reinspection shall be charged a reinspection fee.

16-12-2. Amount of Fee.

The amount of the reinspection to be charged in connection with the requirement of Section 16-12-1 shall be established by resolution of the Sandy City Council.

Chapter 13 REZONING FEE

16-13-1. Rezoning Fee.

- (a) No rezoning within Sandy City shall be considered until such time as the applicant(s) shall have paid to the City a rezoning fee. The said fee has been established to cover costs incurred by the City for research and other services specifically rendered as the result of the request for rezoning.
- (b) The City Council may, upon a showing of good cause therefor, waive the rezoning fee as set forth. Such waiver may be accomplished by motion, duly made and passed by the City Council in open session thereof.

16-13-2. Amount of Fee.

The amount of the rezoning fee to be charged in connection with a petition for rezoning within the limits of Sandy City shall be established by resolution of the City Council.

Chapter 14 DEVELOPMENT IMPACT FEES

16-14-1. Impact Fees Imposed.

(a) Impact fees are hereby imposed as a condition of the issuance of a building permit or subdivision approval by the City for any Development Activity which creates additional demand and need for public facilities for parks and trails; culinary water and storm water collection, in amounts as set forth in Exhibit B which is attached to Ordinance #97-14, on file with the City Recorder, and which may be modified by resolution passed by the Sandy City Council as necessary; and which is incorporated herein by this reference. Applicant shall be entitled to a credit or refund, if applicable, for any impact fees previously paid for the same building permit or development activity.

16-14-2. Service Areas.

The entire area of the City and any areas outside of the City serviced by the parks and trails, the culinary water system, and the storm drain system, are hereby designated and established as one service area.

16-14-3. Adjustment of Impact Fee.

(a) The City may adjust the impact fees(1) imposed pursuant to this ordinance as necessary in order to:

- (1) Respond to unusual circumstances in specific cases.
- (2) Ensure that the impact fees are imposed fairly;
- (3) Permit the adjustment of the amount of the fee based upon studies and data submitted by an applicant as approved by the City Council in order to ensure that the fee represents the proportionate share of the costs(2) of providing such facilities which are reasonably related to and necessary in order to provide the services in question to anticipated future growth and development activities; and
- (4) Allow credits against impact fees for dedication of land for, improvement to or new construction of, any system improvements which are identified in the Capital Facilities Plan and required by the City as a condition of approving the development activity. No credits shall be given for project improvements as defined by the Utah Impact Fees Act.

(b) The Mayor or his/her designee shall have the authority to make such adjustments based upon information submitted by an applicant and any recommendations from City staff.

(c) The Mayor may adopt policies consistent with this ordinance and any resolutions passed by the City Council to assist in the implementation, administration and interpretation of this ordinance related to Municipal Impact Fees.

(d) If the applicant, person, or entity is not satisfied with the Mayor's decision, a

further appeal may be made to the City Council under the procedures set forth in Section 16-14-4 herein.

16-14-4. Administration Challenges and Appeals Procedure.

(a) Any person or entity required to pay an impact fee who believes the fee does not meet the requirements of the law may file a written request for the information with the City as provided by the Utah Impact Fees Act. Within two weeks of the receipt of the request for information, the City shall provide the person or entity with the written analysis required by the Utah Impact Fees Act and any other relevant information relating to the impact fee.

(b) Any person or entity residing in or owning property within the City who believes the fee does not meet the requirements of the law or wishes to challenge the fee shall file a written appeal within thirty (30) days after payment of any impact fee with the Sandy City Mayor, setting forth in detail all factual and legal grounds in support of the appeal. Upon receipt of the appeal, the Mayor shall make a recommendation to the City Council and schedule a public hearing before the City Council on the appeal for the purpose of receiving input from all interested persons. The City Council shall thereafter render its decision on the appeal no later than thirty (30) days after the date the appeal was filed. Any person or entity who has failed to comply with these administrative remedies may not file or join an action challenging the validity of any impact fee.

(c) Any person or entity who was a party to an appeal under this section who is adversely affected by the decision of the City Council may petition the district court for a review of the decision within ninety (90) days of a decision upholding an impact fee by the City Council or within one hundred twenty (120) days after the date the challenge to the impact fee was filed, whichever is earlier. Such a declaratory judgment action or petition for review challenging the validity of the fee shall be filed in the Third District Court for Salt Lake County.

(d) In the event a petition is filed with the court, the City shall transmit to the reviewing court the record of its proceedings including its minutes, findings, orders and, if available, a true and correct transcript of its proceedings.

(e) If the proceeding was tape recorded, a transcript of that tape recording is a true and correct transcript for the purposes of subsection (d) above.

(f) If there is a record:

(1) The district court's review is limited to the record provided by the City;
and

(2) The court may not accept or consider any evidence outside the City's record unless that evidence was offered to the City and the court determines that it was improperly excluded by the City.

(g) If there is an inadequate record, the court may call witnesses and take evidence.

(h) The court shall affirm the decision of the City if the decision was supported by

substantial evidence in the record.

(i) The judge may award reasonable attorney's fees and costs to the prevailing party in any action brought under this section.

16-14-5. Accounting, Expenditure and Refund of Impact Fees.

The impact fees collected pursuant to this enactment shall be deposited into a separate interest bearing ledger account and may only be used for capital improvements for which the fees were collected. The accounting, expenditure and refund of all such impact fees collected shall be handled in accordance with the provisions of the Utah Impact Fees Act.

Chapter 15 REPAIR FEE

16-15-1. Repair Fee.

There is hereby established a repair fee to be charged in connection with any repair performed by Sandy City, which repair should have been performed by another entity other than the City. The said repair fee shall be charged in connection with, but not limited to, repairs made by the City for road cuts, street repairs, public improvements, and any other such repairs or work as may be occasioned by the failure of another entity to perform as required by the ordinances, rules or regulations of the City.

16-15-2. Amount of Fee.

The amount of the repair fee to be charged in connection with the activities as described in Section 16-15- 1 shall be established by resolution of the Sandy City Council.

Chapter 16 FLOOD CONTROL FEE

Chapter 16 CABLE TV FRANCHISE

16-16-1. Grant of Franchise Authority.

- (a) There is hereby granted by Sandy City, hereinafter referred to as the "City", a nonexclusive franchise to Community Telecommunications, Inc., having a trade name of Community Cable of Utah, Inc., a Nevada corporation, hereinafter referred to as Grantee, its successors and assigns for a period beginning from and after the effective date of this ordinance and for a period of fifteen (15) years thereafter, the right and privilege to construct, operate, sell this service from and maintain in, upon, along, across, above, under and over the streets, alleys, public ways and public places now or hereafter laid out or dedicated, and all extensions thereof and additions thereto in Sandy City, Utah, poles, wires, coaxial and other cables, underground conduits, manholes, and such other television conductors and fixtures as are necessary or proper for the maintenance and operation in the City of a system for the transmission of television, FM radio, and electrical impulses and signals for all public and private use; provided however, that such poles or other fixtures placed on any street shall be placed at the outer edge of the sidewalk and inside the curb line, and those placed in alleys shall be placed close to the line on the lot abutting said alleys on said streets, alleys, and public ways, and provided further that underground conduits, cables and other facilities shall be located and constructed in a manner and placed at such depths as not to interfere with the facilities of the City or any public utility operating by virtue of any prior ordinance or franchise adopted by the City or otherwise, or with the grading and maintenance of such streets, alleys and public ways and, before constructing any such facilities, the City shall be furnished complete drawings of any construction pursuant to the provisions of this ordinance, and that the City shall keep and maintain permanent records of the locations and character of any underground facilities constructed and the relationship of such facilities to those of the City and public utilities operating within the City.
- (b) Nonexclusive grant. The right to use and occupy said streets, alleys, public ways, and places for the purpose herein set forth shall not be exclusive, and the City reserves the right to grant a similar use of said streets, alleys, public ways and places, to any person, firm or corporation at any time during the period of this franchise.
- (c) System construction and extension. Within one year of the receipt of final orders granting all necessary permits and authorizations which are required in the conduct of its business, including but not limited to any utility joint use

attachment agreements, microwave carrier licenses, a certificate of compliance as issued by the Federal Communications Commission, and any other permits, licenses, and authorizations to be granted by duly constituted regulatory agencies having jurisdiction over the operation of cable television systems or their associated microwave transmission facilities, shall have been received by the Grantee, the Grantee shall have commenced construction upon the proposed system. The Grantee shall also have within six (6) months after commencement of construction an operable head end least 20% of residential dwellings which are not being served by a CATV system in the City each year after the commencement of construction until 100% of all areas included in the franchise area which are not being served by a CATV system have been covered by and are accessible to energized trunk cable. However, the Grantee will not be held liable for the completion as hereinabove set forth when delayed by any action of the City, or when it is prevented from doing so by circumstances beyond its control such as unavailability of materials, acts of nature or civil strife.

- (d) No person, firm or corporation in the Grantee's service area shall be arbitrarily refused service. However, in recognition of the capital costs involved, for unusual circumstances, such as more than 150 feet of distance from distribution cable to connection of service to subscribers, or a density of less than ten subscribers per 1,320 feet of trunk line, in order to prevent inequitable burdens on potential cable subscribers in more densely populated areas, service may be available on the basis of cost of materials, labor and easements.
- (e) In the event additional adjacent territory is incorporated within the City's limits, by annexation or otherwise, Grantee's rights duties under this ordinance shall be deemed to include such additional territory.

16-16-2. Conditions on Street Occupancy.

- (a) Use. All transmission and distribution structures, lines and equipment erected by the Grantee within the City shall be so located as to cause minimum interference with the proper use of streets, alleys and other public ways and places and to cause minimum interference with the rights or reasonable convenience of property owners who adjoin any of the said streets, alleys or other public ways and places.
- (b) Restoration. In case of any disturbance of pavement, sidewalk, driveway or other surfacing, the Grantee shall, at its own cost and expense, and in a manner approved by the City Engineer and consistent with other City ordinances on the subject of excavation in public streets, replace and restore all paving, sidewalk, driveway or surface of any street or alley disturbed to its original condition of safety and utility. Grantee shall obtain and pay for all permits required by ordinance for and shall be subject to all ordinances relating to excavations or obstructions made by Grantee in streets or alleys. Such restoration work will be guaranteed by the Grantee for a period of one year to be free from structural

defects and in the event there is any problem with such restoration work shall, upon notice given, repair the same within fifteen (15) days after said notice. If the Grantee fails to complete such repairs as requested, the City may then do so at the Grantee's expense.

- (c) Relocation. In the event that any time during the period of this franchise, the City shall lawfully elect to alter the grade of any street, alley or other public way, the Grantee, upon reasonable notice by the City, shall remove and relocate its poles, wires, cables, underground conduits, manholes and other fixtures at its own expense so as to comply with the requirements of Grantor.
- (d) Placement of fixtures and conformance to electrical standards. The Grantee shall not place poles or other fixtures where the same will interfere with any gas, electric or telephone fixture, water hydrant or main, and all such poles or other fixtures placed in any street shall be placed at the outer edge of the sidewalk and inside the curb line, and those placed in alleys shall be placed close to the line of the lot abutting on said alley, and then in such a manner as not to interfere with the usual travel on said streets, alleys and public ways. Grantee agrees to conform to requirements of the City in regard to all installations, and specifically that in any area where electrical utilities are installed underground, the Grantee will likewise install all equipment and cables underground. The Grantee shall install and maintain its wires, cables, fixtures, and other equipment in accordance with the requirements of the most recent edition of the National Electrical Safety Code promulgated by the National Bureau of Standards and the National Electrical Code of the National Board of Fire Underwriters and in such a manner that it will not interfere with any uses by the City or by a public utility serving the City.
- (e) Use of poles and underground lines. It is mutually understood that the Grantee may use poles or underground lines erected or owned and maintained by the City, insofar as the City's easement rights so permit, or by Utah Power and Light and/or Mountain States Telephone, where separate rental agreements can be reached for the use of the same, but where the use of such poles or underground lines is not practical or mutually satisfactory the Grantee shall have the right to erect and maintain its own poles or install cable along underground rights-of-way of the City as may be necessary for the proper construction and maintenance of the television distribution system provided the Grantee shall obtain prior approval under the conditions previously set forth in this chapter from the City as to the necessity for the location of any new poles to be erected or underground cable to be installed. However, any poles erected by the Grantees may be acquired by the City on such terms as are equitable, and thereafter be the property of the City and subject to the rental rates as herein agreed.
- (f) Where underground lines are required. In any area where service is now provided, or where service may later be provided by underground power lines, the Grantee's lines shall also be placed underground in accordance with local subdivision

regulations and with an appropriate rental schedule agreed upon, and if there are underground telephone lines then they shall be used where satisfactory rental agreement can be reached with the telephone company.

- (g) Temporary removal of wire for building moving. The Grantee shall, on the request of any person holding a building moving permit issued by the City, temporarily raise or lower its wires to permit the moving of buildings. The expense of such temporary removal, raising or lowering of wires shall be paid by the person requesting the same, and the Grantee shall have the authority to require such payment in advance. The Grantee shall not be given less than seventy- two (72) hours advance notice to arrange for such temporary wire changes.
- (h) Tree trimming. The Grantee shall have the authority to trim trees upon and overhanging over streets, alleys, sidewalks and public places of the City so as to prevent the branches of such trees from coming in contact with the wires and cables of the Grantee, all trimming to be done under the supervision and direction of the City and at the expense and liability of the Grantee.

16-16-3. Indemnity and Liability Coverage.

- (a) It is expressly understood and agreed by and between the Grantee and the City that the Grantee shall hold the City harmless from all loss sustained by the City on account of any suit, judgment, execution, claim or demand whatsoever, resulting from negligence on the part of the Grantee in the construction, operation or maintenance of its system in the City. The City shall notify the Grantee's representative in the City within thirty (30) days after the presentation of any claim or demand, either by suit or otherwise, made against the City on account of any negligence as aforesaid on the part of the Grantee. The Grantee agrees to maintain and keep in full force and effect at all times during the term of this franchise ordinance sufficient liability insurance coverage to protect the City against any such claims, suits, judgments, executions or demands in a sum not less than one hundred thousand dollars (\$100,000.00) per person in any one claim for personal injury to any one person and not less than three hundred thousand dollars \$300,000.00) as to all claims arising from any one occurrence. The amounts for property damage shall be not less than fifty thousand dollars (\$50,000.00) as to any one claim and not less than two hundred thousand dollars \$200,000.00) aggregate in any single policy year. Copies of the policy of insurance above mentioned, the City to be named as insured, will be filed with the City Recorder of the City before work is commenced and copies of the renewal certificates shall be filed annually on the same date thereafter.
- (b) The Grantee shall maintain a local business office or agent which subscribers may telephone during regular business hours each day except Saturdays, Sundays and other holidays proclaimed by national, state or local governmental authority without incurring added message or toll charges so that CATV maintenance service shall be promptly available. Complaints for other than regular working

hours may be made to a separate telephone maintained for that purpose which shall be listed in the telephone directory, or the same telephone number may be used, at the option of the Grantee. Complaints received prior to 11:00 a.m. of any working day shall be investigated within six (6) hours and those received at all other times shall be investigated within twelve (12) hours. If the problem is caused by Grantee-owned equipment, it shall be repaired as soon as reasonably possible, and the customer shall not have to pay for any day when service is not available for over six (6) hours. Provided, however, the Grantee does not guarantee in any way the functioning of television receivers owned by the customer, it being contemplated that the investigation will be made with a telephone receiver maintained by the Grantee for the investigation of complaints as aforesaid. Should a subscriber have an unresolved complaint regarding the quality of cable television service, equipment malfunctions or similar matters, representative of the City and a representative of the Grantee within thirty (30) days to fully discuss such matters.

16-16-4. Compliance with Applicable Laws and Ordinances, Including Federal Regulations.

- (a) The Grantee shall, at all times during the life of this franchise, be subject to all lawful exercise of the policy power by the City, and to such reasonable regulation as the City shall hereafter by resolution or ordinance provide, and shall fully comply with all applicable rules and regulations now in effect or hereafter adopted by the Federal Communications Commission, the State of Utah and the United States Government.
- (b) Any modification resulting from any amendment of any section of the Rules and Regulations of the Federal Communications Commission which apply to Franchise Standards shall be incorporated into this franchise as of the date such modifications become obligatory under FCC regulations, or in the event no obligatory date is established, within one year of adoption or at the time of franchise renewal, whichever occurs first. If there are any conflicts between the provisions of this ordinance and the provisions of any other City ordinance, provisions of this ordinance shall prevail.

16-16-5. Use of System by City.

- (a) The City shall have the right, without cost during the life of this franchise to make, install and maintain attachments to poles owned and/or used by the Grantee and also to use the cables of the Grantee within the City for wires used by the City in connection with its fire alarms or police signals and surveillance systems, such attachments to be installed and maintained in accordance with the most recent requirements of the National Electrical Safety Code pertaining to such construction, and only after written notice to the Grantee; provided however, that the Grantee shall assume no liability nor be put to any additional expense in connection therewith, and provided further that the City's use thereof shall be in

such manner as not to interfere with the Grantee's use of the same. In further consideration of the granting of this franchise, the Grantee will furnish without installation charge or monthly service fee, connections to all public schools in the corporate limits of the City, to the City Center, City Library, the Senior Citizens Center, the City Police Station, the City Fire Stations, hospitals and such other public and other facilities as may from time to time be mutually agreed upon by the City and Grantee, may also receive such benefit.

- (b) In addition, the City shall have exclusive right to the use of one dedicated channel for its municipal and civic system, universities and other agencies to produce and broadcast appropriate program materials. All cost for acquisition and maintenance of equipment required to conduct such programming and broadcasting shall be the responsibility of agencies other than the Grantee.
- (c) The City may also add to its broadcasting capability without cost to the Grantee such other innovative technological advancements as may become practical and feasible such as bidirectional communications, computer-aided instruction, video disc broadcasts, multiple signal bidirectional usage, etc., provided the same does not use electronic capability in excess of the channel specified. The Grantee further agrees to work with the City to provide technical advice concerning other types of applications which the City or its associated agencies can and ought to make of its broadcast capability.

16-16-6. Consent To Use Existing Utility Facilities.

The City hereby gives its consent to Mountain States Telephone and Telegraph Company, Utah Power and Light Company and any other utility or company to authorize the Grantee to use their poles, underground conduits and other facilities within the City for the purpose of conducting the business of the Grantee and to attach coaxial and other cables, lines, conduits, transformers, and other electrical equipment thereto. Grantee shall nevertheless obtain appropriate consent and shall contract with such companies for approval for the use of such poles, towers and conduits as are owned by said Mountain States Telephone and Telegraph Company, Utah Power and Light Company and other utilities and companies respectively pursuant to the provisions of such ordinance. The rights granted to the Grantee pursuant to the provisions of Section 1 of this chapter shall be supplemental and additional to those granted to the Mountain States Telephone and Telegraph, Utah Power and Light Company and other utilities and companies who have been granted franchises; provided, nevertheless, that the poles of such telephone and power companies shall be utilized by the Grantee hereunder wherever practicable.

16-16-7. Payment to City and Rates.

- (a) In consideration for this grant of franchise, the Grantee agrees to pay to the Treasurer for the City a sum equal to three (3) percent of the gross revenue receipts per annum derived by the Grantee from the monthly service charges received by the Grantee from the subscribers to its services within the City.

Within sixty (60) days after the first days of January and July, following commencement of service and within sixty (60) days after the first days of January and July of each calendar year thereafter during the term of this franchise, the Grantee shall file with the Treasurer of the City a report of such revenue as described in this section for the preceding six (6) month period, which report shall include a computation of the sum due. The Treasurer shall determine the accuracy of the computation and if he finds any errors shall report the same to the Grantee for correction. The records of the Grantee reflecting the information relevant in determining revenues described in this paragraph shall be available for inspection by the City Council of Sandy City or its duly authorized representative at all reasonable hours and upon reasonable notice.

- (b) Gross revenue receipts defined. The phrase "gross revenue receipts per annum derived by the Grantee from monthly service charges" shall be interpreted to include only those revenues derived from the supplying of regular subscriber service; that is, "gross subscriber revenues," as defined by the Commission in paragraph 95 of the Clarification, 46 FCC 2d 175 (1974).
- (c) The City shall regulate rates by adopting resolutions.

16-16-8. Approval of Transfer.

The Grantee shall not sell or transfer its plant or system to another nor transfer any rights under this franchise to another without prior written approval of the Sandy City Council and provided that no sale or transfer shall be effective until the vendee, assignee or lessee has filed in the office of the City Recorder an instrument, duly executed, reciting the fact of such sale, assignment or lease, accepting the terms of the franchise, and agreeing to perform all the conditions thereof.

16-16-9. Commencement of Construction.

The Grantee will proceed to submit the system for approval by the Federal Communications Commission within thirty (30) days after approval by the City of the system layout plans, and within ninety (90) days after receipt of a Certificate of all licenses, permits and other authority requisite for the operation of microwave facilities is obtained and pole line agreements and all necessary legal requirements for the installation of the system are satisfied, shall commence construction of the system. Layout plans shall be submitted by December 31, 1979.

16-16-10. Supervision and Inspection.

All construction or installation work performed subject to the provisions of this ordinance shall be subject to approval of the City Engineer and to such inspection as he shall find necessary to insure compliance with governing ordinances.

16-16-11. Color Transmissions.

The signals transmitted over the cable system shall be capable of distributing color television signals, and when the signals the Grantee distributes are received in color, they shall be distributed in color where technically feasible.

16-16-12. Emergency and Disaster Use.

In case of any emergency or disaster, the Grantee shall, upon the request of the City, make available its facilities to the City for emergency use during such emergency or disaster.

16-16-13. Resident Agent.

The Grantee shall maintain a force of one or more resident agents or employees at all times and shall have sufficient employees to provide safe, adequate and prompt service for its facilities.

16-16-14. City Rules and Amendments.

The right is hereby reserved to the City to adopt, in addition to the provisions herein contained and existing applicable ordinances, such additional regulations as it shall find necessary in the exercise of the police power, provided that such regulations, by ordinance or otherwise, shall be reasonable, and shall not be in conflict with the laws of the State of Utah. Further, it shall be the policy of the City to liberally amend this franchise, upon application of the Grantee, when necessary to enable the Grantee to take advantage of any developments in the field of transmission of television and radio signals or other electronic impulses for communications or other electronic services which will afford it an opportunity to more effectively, efficiently, or economically serve its subscribers. However, this shall not in any way be construed to require the City to make any such amendment.

16-16-15. Forfeiture.

Any violation by the Grantee, its vendee, lessee or successor of the provisions of this franchise, or any material portions thereof, or the failure to promptly perform any of the provisions hereunder to the City, after written notice to the Grantee and continuation of such violation, failure or default, sixty (60) days after such notice shall be cause for termination of this franchise and forfeiture of all rights hereunder. Upon termination, Grantee shall remove its installations at its own expense.

16-16-16. Binding on Assigns.

The right granted by this franchise ordinance shall be binding upon and inure to the benefit of the heirs, assigns, grantees and successors in interest of the parties. Approval of the City Council is required prior to assignment of any kind.

16-16-17. Severability.

If any section, subsection, sentence, clause or any portion of this chapter is found to be invalid and unconstitutional by any court of competent jurisdiction, such portion shall be deemed a separate, distinct and independent provision and such decision shall not affect the validity of

remaining portions of this franchise.

16-16-18. The Company's Qualifications.

The Grantee's legal, character, financial, technical and other qualifications, and the adequacy and feasibility of its construction arrangements may be approved by the City Council as part of a full public proceeding affording due process, at the conclusion of which the subject franchise may be awarded.

16-16-19. Local Ordinance.

The Grantee herein shall abide by any and every City ordinance pertaining to the activities, construction, maintenance and operation of the business of the Grantee.

16-16-20. Pornographic or Lewd Materials and Extra Charges.

Grantee shall not originate in its system for viewing within the City any materials for viewing which are pornographic, lewd or which, if presented in public, would be violative of any ordinance of the City or the State of Utah.

16-16-21. Preparation Fees.

Grantee for this privilege shall pay to Sandy City Corporation the sum of four hundred dollars (\$400.00) for review by engineers, legal counsel, and publication of this ordinance, to be paid into the general fund of the City upon the effective date of this ordinance.

16-16-22. Bond.

Grantee, within thirty (30) days from the effective date hereof, shall provide a corporate surety bond in the sum of ten thousand dollars (\$10,000.00), in a form satisfactory to the City Attorney the condition of which shall be the commencement and the completion of the construction of the system as herein set forth. The said bond shall continue in force for a period of three (3) years. Thereafter, a like bond in the amount of six thousand dollars (\$6,000.00) shall be maintained throughout the life of this franchise.

Chapter 17 DISCONNECTION FEE

16-17-1. Disconnection Fee.

Any application made to the City for assistance in or approval of a disconnection of property from the City limits in conformance with Section 10-2-421 or with Sections 10-4-1 through 10-4-5, U.C.A. 1953 as amended, shall be accompanied by a fee in an amount as established by resolution of the City Council.

16-17-2. Necessity of Fee.

No application for assistance in accordance with a petition for disconnection or boundary adjustment shall be given by the City until such time as the fees prescribed in the just preceding section shall have been paid.

Chapter 26 CABLE TV FRANCHISE

16-26-1. Grant of Franchise Authority.

- (a) There is hereby granted by Sandy City, hereinafter referred to as the "City," a nonexclusive franchise to THE MISCO GROUP, a limited partnership organized under the laws of the State of Nevada, having a trade name of South Valley Cablevision, as registered with the State of Utah, hereinafter referred to as Grantee, its successors and assigns for a period beginning from and after the effective date of this ordinance and for a period of fifteen (15) years thereafter, the right and privilege to construct, operate, sell this service from and maintain in, upon, along, across, above, under and over the streets, alleys, public ways and public places now or hereafter laid out or dedicated, and all extension thereof and additions thereto in Sandy City, Utah, poles, wires, coaxial and other cables, underground conduits, manholes, and such other television conductors and fixtures as are necessary or proper for the maintenance and operation in the City of a custom for the transmission of television, FM radio, and electrical impulses and signals for all public and private use; provided, however, that such poles or other fixtures placed on any street shall be placed at the outer edge of the sidewalk and inside the curb line, and those placed in alleys shall be placed close to the line on the lot abutting said alleys on said streets, alleys, and public ways, and provided further that underground conduits, cables and other facilities shall be located and constructed in a manner and placed at such depths as not to interfere with the facilities of the City or any public utility operating by virtue of any prior ordinance or franchise adopted by the City or otherwise, or with the grading and maintenance of such streets, alleys and public ways and, before constructing any such facilities, the City shall be furnished complete drawings of any construction pursuant to the provisions of this ordinance, and that the City shall keep and maintain permanent records of the locations and character of any underground facilities constructed and the relationship of such facilities to those of the City and public utilities operating within the City.
- (b) Nonexclusive grant. The right to use and occupy said streets, alleys, public ways, and places for the purpose herein set forth shall not be exclusive, and the City reserves the right to grant a similar use of said streets, alleys, public ways and places, to any person, firm or corporation at any time during the period of this franchise.
- (c) System construction and extension. Within one year of the receipt of final orders granting all necessary permits and authorizations which are required in the conduct of its business, including but not limited to any utility joint use attachment agreements, microwave carrier licenses, a certificate of compliance as issued by the Federal Communications Commission, and any other permits,

licenses, and authorizations to be granted by duly constituted regulatory agencies having jurisdiction over the operation of cable television systems or their associated microwave transmission facilities, shall have been received by the Grantee, the Grantee shall have commenced construction upon the proposed system. The Grantee shall also have within six (6) months after commencement of construction an operable head end completed, and shall have extended energized trunk cable to at least 20% of residential dwellings which are not being served by a CATV system in the City each year after the commencement of construction until 100% of all areas included in the franchise area which are not being served by a CATV system have been covered by and are accessible to energized trunk cable. However, the Grantee will not be held liable for the completion as hereinabove set forth when delayed by any action of the City, or when it is prevented from doing so by circumstances beyond its control such as unavailability of materials, acts of nature or civil strife.

- (d) No person, firm or corporation in the Grantee's service area shall be arbitrarily refused service. However, in recognition of the capital costs involved, for unusual circumstances, such as more than 150 feet of distance from distribution cable to connection of service to subscribers, or a density of less than ten subscribers per 1,320 feet of trunk line, in order to prevent inequitable burdens on potential cable subscribers in more densely populated areas, service may be available on the basis of cost of materials, labor and easements.
- (e) In the event additional adjacent territory is incorporated within the City's limits, by annexation or otherwise, Grantee's rights and duties under this ordinance shall be deemed to include such additional territory.

16-26-2. Conditions on Street Occupancy.

- (a) Use. All transmission and distribution structures, lines and equipment erected by the Grantee within the City shall be so located as to cause minimum interference with the proper use of streets, alleys and other public ways and places and to cause minimum interference with the rights or reasonable convenience of property owners who adjoin any of the said streets, alleys or other public ways and places.
- (b) Restoration. In case of any disturbance of pavement, sidewalk, driveway or other surfacing, the Grantee shall, at its own cost and expense, and in a manner approved by the City Engineer and consistent with other City ordinances on the subject of excavation in public streets, replace and restore all paving, sidewalk, driveway or surface of any street or alley disturbed to its original condition of safety and utility. Grantee shall obtain and pay for all permits required by ordinance for and shall be subject to all ordinances relating to excavations or obstructions made by Grantee in streets or alleys. Such restoration work will be guaranteed by the Grantee for a period of one year to be free from structural defects and in the event there is any problem with such restoration work shall,

upon notice given, repair the same within fifteen (15) days after said notice. If the Grantee fails to complete such repairs as requested, the City may then do so at the Grantee's expense.

- (c) Relocation. In the event that any time during the period of this franchise, the City shall lawfully elect to alter the grade of any street, alley or other public way, the Grantee, upon reasonable notice by the City, shall remove and relocate its poles, wires, cables, underground conduits, manholes and other fixtures at its own expense so as to comply with the requirements of Grantor.
- (d) Placement of fixtures and conformance to electrical standards. The Grantee shall not place poles or other fixtures where the same will interfere with any gas, electric or telephone fixture, water hydrant or main, and all such poles or other fixtures placed in any street shall be placed at the outer edge of the sidewalk and inside the curb line, and those placed in alleys shall be placed close to the line of the lot abutting on said alley, and then in such manner as not to interfere with the usual travel on said streets, alleys and public ways. Grantee agrees to conform to requirements of the City in regard to all installations, and specifically that in any area where electrical utilities are installed underground, that Grantee will likewise install all equipment and cables underground. The Grantee shall install all equipment and cables underground. The Grantee shall install and maintain its wires, cables, fixtures, and other equipment in accordance with the requirements of the most recent edition of the National Electrical Safety Code promulgated by the National Bureau of Standards and the National Electrical Code of the National Board of Fire Underwriters and in such a manner that it will not interfere with any uses by the City or by a public utility serving the City.
- (e) Use of poles and underground lines. It is mutually understood that the Grantee may use poles or underground lines erected or owned and maintained by the City, insofar as the City's easement rights so permit, or by Utah Power and Light and/or Mountain States Telephone, where separate rental agreements can be reached for the use of the same, but where the use of such poles or underground lines is not practical or mutually satisfactory, the Grantee shall have the right to erect and maintain its own poles or install cable along underground rights-of-way of the City as may be necessary for the proper construction and maintenance of the television distribution system provided the Grantee shall obtain prior approval under the conditions previously set forth in this chapter from the City as to the necessity for the locatio of any new poles to be erected or underground cable to be installed. However, any poles erected by the Grantee may be acquired by the City on such terms as are equitable, and thereafter be the property of the City and subject to the rental rates as herein agreed.
- (f) Where underground lines are required. In any area where service is now provided, or where service may later be provided by underground power lines, the Grantee's lines shall also be placed underground in accordance with local subdivision regulations and with an appropriate rental schedule agreed upon, and if there are

underground telephone lines then they shall be used where satisfactory rental agreement can be reached with the telephone company.

- (g) Temporary removal of wire for building moving. The Grantee shall, on the request of any person holding a building moving permit issued by the City, temporarily raise or lower its wires to permit the moving of buildings. The expense of such temporary removal, raising or lowering of wires shall be paid by the person requesting the same, and the Grantee shall have the authority to require such payment in advance. The Grantee shall not be given less than seventy- two (72) hours advance notice to arrange for such temporary wire changes.
- (h) Tree trimming. The Grantee shall have the authority to trim trees upon and overhanging over streets, alleys, sidewalks and public places of the City so as to prevent the branches of such trees from coming in contact with the wires and cables of the Grantee, all trimming to be done under the supervision and direction of the City and at the expense and liability of the Grantee.

16-26-3. Indemnity and Liability Coverage.

- (a) It is expressly understood and agreed by and between the Grantee and the City that the Grantee shall hold the City harmless from all loss sustained by the City on account of any suit, judgment, execution, claim or demand whatsoever, resulting from negligence in the part of the Grantee in the construction, operation or maintenance of its system in the City. The City shall notify the Grantee's representative in the City within thirty (30) days after the presentation of any claim or demand, either by suit or otherwise, made against the City on account of any negligence as aforesaid on the part of the Grantee. The Grantee agrees to maintain and keep in full force and effect at all times during the term of this franchise ordinance sufficient liability insurance coverage to protect the City against any such claims, suits, judgments, executions or demands in a sum not less than one hundred thousand dollars (\$100,000.00) per person in any one claim for personal injury to any one person and not less than three hundred thousand dollars (\$300,000.00) as to all claims arising from any one occurrence. The amounts for property damage shall be not less than fifty thousand dollars (\$50,000.00) as to any one claim and not less than two hundred thousand dollars (\$200,000.00) aggregate in any single policy year. Copies of the policy of insurance above mentioned, the City to be named as insured, will be filed with the City Recorder of the City before work is commenced and copies of the renewal certificates shall be filed annually on the same date thereafter.
- (b) The Grantee shall maintain a local business office or agent which subscribers may telephone during regular business hours each day except Saturdays, Sundays and other holidays proclaimed by national, state or local governmental authority without incurring added message or toll charges so that CATV maintenance service shall be promptly available. Complaints for other than regular working hours may be made to a separate telephone maintained for that purpose which

shall be listed in the telephone directory, or the same telephone number may be used, at the option of the Grantee. Complaints received prior to 11:00 a.m. of any working day shall be investigated within six (6) hours and those received at all other times shall be investigated within twelve (12) hours. If the problem is caused by Grantee-owned equipment, it shall be repaired as soon as reasonably possible, and the customer shall not have to pay for any day when service is not available for over six (6) hours. Provided, however, the Grantee does not guarantee in any way the functioning of television receivers owned by the customer, it being contemplated that the investigation will be made with a telephone receiver maintained by the Grantee for the investigation of complaints as aforesaid. Should a subscriber have an unresolved complaint regarding the quality of cable television service, equipment malfunctions or similar matters, the subscriber shall be entitled to meet jointly with a representative of the City and a representative of the Grantee within thirty (30) days to fully discuss such matters.

16-26-4. Compliance with Applicable Laws and Ordinances, Including Federal Regulations.

- (a) The Grantee shall, at all times during the life of this franchise, be subject to all lawful exercise of the policy power by the City, and to such reasonable regulation as the City shall hereafter by resolution or ordinance provide, and shall fully comply with all applicable rules and regulations now in effect or hereafter adopted by the Federal Communications Commission, the State of Utah and the United States Government.
- (b) Any modification resulting from any amendment of any section of the Rules and Regulations of the Federal Communications Commission which apply to Franchise Standards shall be incorporated into this franchise as of the date such modifications become obligatory under FCC regulations, or in the event no obligatory date is established, within one year of adoption or at the time of franchise renewal, whichever occurs first. If there are any conflicts between the provisions of this ordinance and the provisions of any other City ordinance, provisions of this ordinance shall prevail.

16-26-5. Use of System by City.

- (a) The City shall have the right, without cost during the life of this franchise to make, install and maintain attachments to poles owned and/or used by the grantee and also to use the cables of the Grantee within the City for wires used by the City in connection with its fire alarms or police signals and surveillance systems, such attachments to be installed and maintained in accordance with the most recent requirements of the National Electrical Safety Code pertaining to such construction, and only after written notice to the Grantee; provided, however, that the Grantee shall assume no liability nor be put to any additional expense in connection therewith, and provided further that the City's use thereof shall be in such a manner as not to interfere with the Grantee's use of the same. In further

consideration of the granting of this franchise, the Grantee will furnish without installation charge or monthly service fee, connections to all public schools in the corporate limits of the City, to the City Center, City Library, the Senior Citizens Center, the City Police Station, the City Fire Stations, hospitals and such other public and other facilities as may from time to time be mutually agreed upon by the City and Grantee, may also receive such benefit.

- (b) In addition, the City shall have exclusive right to the use of any dedicated channel for its municipal and civic purposes and may by itself or jointly join with the public school system, universities and other agencies to produce and broadcast appropriate program materials. All cost of acquisition and maintenance of equipment required to conduct such programming and broadcasting shall be the responsibility of agencies other than the Grantee.
- (c) The City may also add to its broadcasting capability without cost to the Grantee such other innovative technological advancements as may become practical and feasible such as bidirectional communications, computer-aided instruction, video disc broadcasts, multiple signal bidirectional usage, etc., provided the same does not use electronic capability in excess of the channel specified. The Grantee further agrees to work with the City to provide technical advice concerning other types of applications which the City or its associated agencies can and ought to make of its broadcast capability.

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The City hereby gives its consent to Mountain States Telephone and Telegraph Company, Utah Power and Light Company and any other utility company to authorize the Grantee to use their poles, underground conduits and other facilities within the City for the purpose of conducting the business of the Grantee and to attach coaxial and other cables, lines, conduits, transformers, and other electrical equipment thereto. Grantee shall nevertheless obtain appropriate consent and shall contract with such companies for approval for the use of such poles, towers and conduits as are owned by said Mountain States Telephone and Telegraph Company, Utah Power and Light Company and other utilities and companies respectively pursuant to the provisions of such ordinance. The rights granted to the Grantee pursuant to the provisions of Section 1 of this chapter shall be supplemental and additional to those granted to the Mountain States Telephone and Telegraph, Utah Power and Light Company and other utilities and companies who have been granted franchises; provided, nevertheless, that the poles of such telephone and power companies shall be utilized by the Grantee hereunder wherever practicable.

16-26-7. Payment to City and Rates.

- (a) In consideration for this grant of franchise, the Grantee agrees to pay to the Treasurer for the City a sum equal to three (3) percent) of the gross revenue receipts per annum derived by the Grantee from monthly service charges received by the Grantee from the subscribers to its services within the City. Within sixty

(60) days after the first days of January and July, following commencement of service and within sixty (60) days after the first days of January and July of each calendar year thereafter during the term of this franchise, the Grantee shall file with the Treasurer of the City a report of such revenue as described in this section for the preceding six (6) month period, which report shall include a computation of the sum due. The Treasurer shall determine the accuracy of the computation and if he finds any errors shall report the same to the Grantee for correction. The records of the Grantee reflecting the information relevant in determining revenues described in this paragraph shall be available for inspection by the City Council of Sandy City or its duly authorized representative at all reasonable hours and upon reasonable notice.

- (b) Gross revenue receipts defined. The phrase "gross revenue receipts per annum derived by the Grantee from monthly service charges" shall be interpreted to include only those revenues derived from the supplying of regular subscriber service; that is, "gross subscriber revenues", as defined by the Commission in paragraph 95 of the Clarification, 46 FCC 2d 175 (1974).
- (c) The City shall regulate rates by adopting resolutions.

16-26-8. Approval of Transfer.

The Grantee shall not sell or transfer its plant or system to another nor transfer any rights under this franchise to another without prior written approval of the Sandy City Council and provided that no sale or transfer shall be effective until the vendee, assignee or lessee has filed in the office of the City Recorder an instrument, duly executed, reciting the fact of such sale, assignment or lease, accepting the terms of the franchise, and agreeing to perform all the conditions thereof.

16-26-9. Commencement of Construction.

The Grantee will proceed to submit the system for approval by the Federal Communications Commission within thirty (30) days after approval by the City of the system layout plans, and within ninety (90) days after receipt of a Certificate of Compliance from the Federal Communications Commission and after all licenses, permits and other authority requisite for the operation of microwave facilities is obtained and pole line agreements and all necessary legal requirements for the installation of the system are satisfied, shall commence construction of the system. Layout plans shall be submitted by December 31, 1979.

16-26-10. Supervision and Inspection.

All construction or installation work performed subject to the provisions of this ordinance shall be subject to approval of the City Engineer and to such inspection as he shall find necessary to insure compliance with governing ordinances.

16-26-11. Color Transmissions.

The signals transmitted over the cable system shall be capable of distributing color television signals, and when the signals the Grantee distributes are received in color, they shall be distributed in color where technically feasible.

16-26-12. Emergency and Disaster Use.

In case of emergency or disaster, the Grantee shall, upon the request of the City, make available its facilities to the City for emergency use during such emergency or disaster.

16-26-13. Resident Agent.

The Grantee shall maintain a force of one or more resident agents or employees within a radius of sufficient adjacency so as to afford not more than a ten minute access time by automobile to the franchise area, and at all times shall have sufficient employees to provide safe, adequate and prompt service for its facilities.

16-26-14. City Rules and Amendments.

The right is hereby reserved to the City to adopt, in addition to the provisions herein contained in existing applicable ordinances, such additional regulations as it shall find necessary in the exercise of the police power, provided that such regulations, by ordinance or otherwise, shall be reasonable, and shall not be in conflict with the laws of the State of Utah. Further, it shall be the policy of the City to liberally amend this franchise, upon application of the Grantee, when necessary to enable the Grantee to take advantage of any developments in the field of transmission of television and radio signals or other electronic impulses for communications or other electronic services which will afford it an opportunity to more effectively, efficiently or economically serve its subscribers. However, this shall not in any way be construed to require the City to make any such amendment.

16-26-15. Forfeiture.

Any violation by the Grantee, its vendee, lessee or successor of the provisions of this franchise, or any material portions thereof, or the failure to promptly perform any of the provisions hereunder to the City, after written notice to the Grantee and continuation of such violation, failure or default, sixty (60) days after such notice shall be cause for termination of this franchise and forfeiture of all rights hereunder. Upon termination, Grantee shall remove its installations at its own expense.

16-26-16. Binding on Assigns.

The right granted by this franchise ordinance shall be binding upon and inure to the benefit of the heirs, assigns, grantee and successors in interest of the parties. Approval of the City Council is required prior to assignment of any kind.

16-26-17. Severability.

If any section, subsection, sentence, clause or any portion of this chapter is found to be invalid and unconstitutional by any court of competent jurisdiction, such portion shall be deemed

a separate, distinct and independent provision and such decision shall not affect the validity of remaining portions of this franchise.

16-26-18. The Company's Qualifications.

The Grantee's legal, character, financial, technical, and other qualifications, and the adequacy and feasibility of its construction arrangements may be approved by the City Council as part of a full public proceeding affording due process, at the conclusion of which the subject franchise may be awarded.

16-26-19. Local Ordinances.

The Grantee herein shall abide by any and every City ordinance pertaining to the activities, construction, maintenance and operation of the business of the Grantee.

16-26-20. Pornographic or Lewd Materials.

Grantee shall not originate in its system for viewing within the City any materials for viewing which are pornographic, lewd or which, if presented in public, would be violative of any ordinance of the City or the State of Utah.

16-26-21. Preparation Fees.

Grantee for this privilege shall pay to Sandy City Corporation the sum of four hundred dollars (\$400.00) for review by engineers, legal counsel, and publication of this ordinance, to be paid into the general fund of the City upon the effective date of this ordinance.

16-26-22. Bond.

Grantee, within thirty (30) days from the effective date hereof, shall provide a corporate surety bond in the sum of ten thousand dollars (\$10,000.00), in a form satisfactory to the City Attorney the condition of which shall be the commencement and the completion of the construction of the system for a period of three (3) years. Thereafter, a like bond in the amount of six thousand dollars (\$6,000.00) shall be maintained throughout the life of this franchise.

ADOPTED ORD. 92-44, AUGUST 25, 1992, PUBLISHED SEPTEMBER 3, 1992. Chapters 27, 28 and 29.

AMENDED ORD. 93-27, MAY 4, 1993, PUBLISHED MAY 13, 1993, NEW CHAPTER 30 ADOPTED.

Chapter 27 CABLE TELEVISION SYSTEMS

16-27-1. Purpose.

The purpose of this chapter is to regulate in the public interest the operation of cable communications systems and their use of the public rights-of-way by establishing procedures for granting and terminating franchises, by prescribing rights and duties of operators and users of cable communication systems, and by providing generally for cable communications services to the citizens of the City.

16-27-2. Short title.

This chapter shall constitute the "Cable Communications Ordinance" of the City and may be referred to as such.

16-27-3. Definitions of terms.

For the purpose of this chapter the following terms, phrases, words, abbreviations and derivations shall have the following meaning. When not inconsistent with the context, words used in the present tense shall include the future tense, words in the plural number include the singular number and words in the singular number include the plural number.

- (a) "Access channel" means a channel designated and maintained by a cable communications system for programming not originated or procured by the system, including, but not limited to, the local government, the educational, and public access channels.
- (b) "Affiliate" means a wholly owned entity which owns or controls, is owned or controlled by, or is under common ownership with the grantee.
- (c) "Cable Act" means the Cable Communications Policy Act of 1984, as amended.
- (d) "Cable communication system" or "system" means a system employing antennae, microwave, wires, wave-guides, coaxial cables or other conductors, equipment, or facilities designed, constructed, or used for the purpose of:
 - (1) Collecting and amplifying local and distant broadcast, television, or radio signals and distributing and transmitting such signals:
 - (2) Transmitting original cablecast programming not received through television

broadcast signals;

- (3) Transmitting television pictures, film and video tape programs not received through broadcast television signals, whether or not encoded or processed to permit reception by only selected receivers; and
- (4) Transmitting and receiving all other signals, including digital, voice, or audiovisual.

It does not include the programming carried by contract by a grantee with a network or programmer.

- (e) "City" means Sandy City, or the lawful successor, transferee or assignee thereof.
- (f) "FCC" means Federal Communications Commission, or its successor.
- (g) "Franchise" means and includes any authorization granted hereunder in terms of franchise, privilege, permit, license, or otherwise to construct, operate and maintain a cable communication system within all or a specified area of the City for the purpose of offering cable services or other services to subscribers. Any such authorization, in whatever form granted, shall not supersede the requirement to obtain any other license or permit required for the privilege of transacting and carrying on a business within the City as required by other ordinances and laws of this City.
- (h) "Grantee" means any person, firm, or corporation granted a franchise by the City.
- (i) Gross Revenues.
 - (1) "Gross revenues" means all revenues, as determined according to generally accepted accounting principles consistently applied, derived directly or indirectly from revenues received by the grantee, arising from or attributable to operation of the cable communication system in the service area, including but not limited to:
 - A. Revenue from all charges for services provided to subscribers of entertainment and non-entertainment services (including leased access fees);
 - B. Revenue from all charges for the insertion of commercial advertisements upon the cable communication system in the service area;
 - C. Revenue from all charges for the leased use of studios in the service area;
 - D. Revenue from all charges for the installation, connection and reinstatement of equipment necessary for the utilization of the cable communication system and the provision of subscriber and the other services in the service area; and
 - E. Grantee's pro rata portion of any revenues on a subscriber base basis

derived from any other person or source arising from or attributable to grantee's operation of the cable communication system in the service area, to which the City is authorized to apply a franchise fee under Federal, State or local law as it may exist from time to time during the term of the franchise.

- (j) "Public way" means the surface of, and the space above and below, any public street, highway, freeway, bridge, land path, alley, court, boulevard, sidewalk, parkway, way, lane, public way, drive, circle or other public right-of-way including public utility easements, dedicated utility strips or rights-of-way dedicated for compatible uses, and any temporary or permanent fixtures or improvements located thereon now or hereafter held by the City. Public way also means any easement now or hereafter held by the City within the service area for the purpose of public travel, or for utility or public services use dedicated for compatible uses. Public way shall include other easements or rights-of-way as shall within their proper use and meaning entitle the City and the grantee with the City's approval use for the purposes of installing or transmitting grantee's cable services or other service over poles, wires, cables, conductors, ducts, conduits, vaults, manholes, amplifiers, appliances, attachments and other property as may be ordinarily necessary and pertinent to the system.
- (k) "Service area" means the service area set out in grantee's franchise within the present municipal boundaries of the City, and shall include any legal additions thereto by annexation or other legal means. Where any legal additions to the City occur, by annexation or by other means, the grantee whose service area the addition falls into shall service those persons interested in receiving cable service in that area, subject to Section 16-27-12.
- (l) "Subscriber" or "customer" means any person or entity lawfully receiving for consideration, direct or indirect, any service of the grantee's cable communications system.
- (m) "System". See (d) above.

16-27-4. Requirement for franchise.

Subject to applicable Federal, State and local law, it is unlawful for any person to install, construct, operate or maintain a cable communications system on streets or the public way within all or any part of the City without first obtaining a franchise under the terms and provisions of this chapter.

16-27-5. Conditions of street occupancy.

- (a) All transmission and distribution structures, poles, other lines, and equipment installed or erected by the grantee pursuant to the term thereof shall be located so as to cause a minimum of interference with the proper use of public ways. All cables, wires and other equipment shall be installed, where possible, parallel with

electric and telephone lines. Where the conditions contained herein do not otherwise dictate the placement of poles and other fixtures, then such poles or other fixtures placed on any street shall be placed at the outer edge of the sidewalk and inside the curbline, and those placed in alleys shall be placed as close to the line on the lot abutting said alleys as is reasonably possible, and then in such a manner as not to interfere with the usual travel on said streets, alleys, and public ways, and provided further that underground conditions, cable and other facilities shall be located and constructed in such a manner and placed at such depths as not to interfere with existing facilities of the City or any public utility, or with the grading and maintenance of such streets, alleys and public ways and, upon request, the City shall be furnished complete drawings of any construction pursuant to the provisions of this ordinance. The grantee shall keep and maintain permanent records of the locations and character of any underground facilities constructed.

- (b) Nothing contained in this Section shall relieve the City or any person, company or corporation from liability arising out of the failure to exercise reasonable care to avoid damaging grantee's facilities while performing any work connected with grading, regrading, or changing the line of any street or public place or with the construction or reconstruction of any sewer or water system.

16-27-6. Restoration of public ways.

- (a) All transmission and distribution structures, lines, and equipment erected by the grantee within the City shall be so located as to cause minimum interference with the proper use of streets, alleys and other public ways and places, and to cause minimum interference with the rights or reasonable convenience of property owners who adjoin any of the said streets, alleys or other public ways and places.
- (b) In case of any disturbance of pavement, sidewalk, driveway or other surfacing, the grantee shall, at its own cost and expense and in a manner approved by the City's Director of Public Works, replace and restore all paving, sidewalk, driveway or surface of any street or alley disturbed, conforming to the City's ordinances, regulations and standards for such work, and shall maintain the restoration in an approved condition for a period of not less than three (3) years, notwithstanding any City standard or regulation which may require maintenance for a shorter period of time. Grantee shall not commence work in a public way until it has submitted an application to the City Engineer for a permit to do the work, and until it has received a written permit to do it. However, in case of reasonably required emergency repairs, in which the grantee does not have sufficient time to reasonably submit the application and to obtain the permit required herein, the grantee shall be permitted to make such repairs provided that by the next City business day the grantee shall submit the required application, and shall take such other steps required by City ordinances, regulations and standards for road cut permits. For purposes of this subsection (b), an emergency repair shall constitute the loss of picture to 50 or more subscribers where the next

City business day begins at least 24 hours away. Where reasonably possible in such cases, the grantee shall bore or shoot a "missile" under a road rather than cutting the road. Grantee will abide by all applicable City ordinances, regulations and requirements for such work. This subsection (b) shall be superseded by any general ordinance dealing with road cuts passed by the City hereafter.

- (c) Except where written permission is obtained from the City Engineer or the City Engineer, the grantee shall not cut or disturb the pavement of any public way in which there is laid geotextile fabric.

16-27-7. Relocation.

- (a) Upon receipt of reasonable advance notice, the grantee shall, at its own expense, protect, support, temporarily disconnect, relocate in the public way, or remove from the public way, any property of the grantee when lawfully required by the City by reason of traffic conditions; public safety; street abandonment; freeway and street construction; change or establishment of street grade; installation of sewers, drains, or gas or water pipes; or any other type of structures or improvements by the City; but, the grantee shall in all cases, have the right of abandonment of its property.
- (b) The grantee shall, on the request of any person holding a building moving permit issued by the City, temporarily raise or lower its wires to permit the moving of such building, provided:
 - (1) The expense of such temporary raising and lowering of wires is paid by said person, including, if required by the grantee, making such payment in advance; and
 - (2) The grantee is given not less than seven business days' advance written notice to arrange for such temporary wire changes.

16-27-8. Trimming of trees and shrubbery.

The grantee shall have the authority to reasonably trim trees or other natural growth overhanging any part of its cable communications system in the service area so as to prevent branches from coming in contact with grantee's wires, cables, or other equipment. The grantee shall make a reasonable best effort, including written notice to owners of property adjacent to the trees at least 72 hours prior to the work. Except in cases of emergency, the owners shall be provided the option of trimming the trees themselves as required. The grantee shall hold harmless the City, its officers, agents and employees from and against any and all damages arising out of or resulting from the removal, trimming, mutilation of or injury to any tree or trees proximately caused by the grantee, its officers agents, employees or subcontractors.

16-27-9. Franchise authority use of grantee's poles and conduits.

Subject to any applicable State or Federal regulations or tariffs, the City shall, after giving written notice, have the right to make use of any poles or conduits owned, controlled or

maintained by or for use of the grantee, that are located in any public way. Such use by the City shall not interfere with current or future use by the grantee. Further, to the extent not expressly precluded by law, the City agrees to indemnify the grantee from any damages arising from or attributable to such use.

16-27-10. Safety and construction requirements.

- (a) Construction, installation and maintenance of the cable communications system shall be performed in a safe, orderly and workmanlike manner.
- (b) Grantee shall install and maintain its wires, cables, fixtures and other equipment in accordance with applicable safety codes or technical requirements, including, but not limited to, National Electrical Safety Code (National Bureau of Standards); National Electrical Code (National Bureau of Fire Underwriters); and applicable FCC or other Federal, State or local regulations, and in such manner that they will not interfere with any installations of the City or any existing public utility. All lines, equipment and connections in, over, under, and upon the streets and private property within the City, wherever situated or located, shall at all times be kept and maintained in a safe and suitable condition and in good order and repair. All installations shall be made so as not to impair the fire integrity of any building. The cable communications system shall not endanger nor interfere with the safety of persons or property in the service area.
- (c) Grantee shall at all times retain control of each of its subcontractors and their subcontractors to the extent that grantee can respond to complaints and concerns of the City or other persons. All permits required for construction of grantee's system shall be issued to grantee.

16-27-11. Aerial and underground construction.

- (a) In those portions of the service area where the transmission or distribution facilities of the public utilities providing telephone and electric services are underground, or where such facilities are later placed underground, the grantee likewise shall construct, operate and maintain its transmission and distribution facilities underground (except for ground-mounted appurtenances such as subscriber taps, line extenders, system passive devices, amplifier, power supplies, pedestals, etc.) provided that the underground facilities are capable of receiving the equipment without technical degradation of the cable communications system's signal quality. In those parts of the service area where the transmission or distribution facilities of the public utilities are both aerial and underground, grantee shall have the sole discretion to construct, operate and maintain all of its transmission and distribution facilities, or any part thereof, aerially or underground.
- (b) Notwithstanding anything to the contrary contained in this section, in the event that all of the transmission or distribution facilities of the public utilities providing telephone communications and electric services in a given area are to

be placed underground, upon six months' notice grantee shall be required to place all of its transmission and distribution facilities underground in the given area concurrent with placement by the utilities, and thereafter construct or operate and maintain all of its transmission and distribution facilities underground in the given area.

- (c) Pedestals. "Pedestals" or enclosures containing devices needed to service cable lines for trunk cable, feeder cable, or drop cable connections, shall, where grantee makes new connections where it has new underground facilities, and for existing connections where the existing pedestal has remained unrepaired for more than 45 days after written notification as provided herein be of the "low-profile" type, which shall be as low to ground level as is commercially practicable, with equipment approved by the City Engineer, which shall not be unreasonably withheld.

In the event that reasonably reliable flush-mount pedestal technology becomes available at reasonable cost during the term of the franchise, then grantee shall use such flush-mounted pedestals and technology which is approved by the City Engineer, which shall not be unreasonably withheld, in areas where grantee is required to use "low-profile" pedestals in the next above paragraph in this subsection (c). For purposes of this subsection (c), "flush-mount pedestal" shall mean a pedestal which is placed in the ground with the top of the pedestal at the level of the sod or soil.

- (d) Grantee shall reasonably compensate the City or other person for damages caused by any negligence of the grantee or its subcontractors in the construction of the system or shall, in its sole discretion and at its own expense, reasonably replace all landscaping or other similar damage as a result of any construction of the system undertaken by grantee. Such replacement shall be done within 45 days from the time weather permits. This subsection (d) shall not preclude any person damaged by the grantee from exercising any rights that person has under law.

16-27-12. Extension of service.

- (a) Authorization. Grantee is hereby authorized to extend the cable communications system throughout the service area.
- (b) Expansion Plan. Grantee shall file with the City each year with its annual report a one-year expansion plan indicating grantee's present plan for construction, rebuilding, or overbuilding the service area, including target dates for completion. The expansion plan will be submitted in a format mutually acceptable to the grantee and the City.
- (c) System Construction and Service Requirements.
 - (1) Whenever grantee shall receive a request for service from at least ten or more subscribers within one thousand three hundred twenty cable-bearing strand

feet (one-quarter cable mile) of its trunk or feeder cable and located in its service area, it shall extend its cable communications system to such subscribers at its normal connection fee; provided that such extension is technically feasible, will not adversely affect the operation of the cable communications system, and grantee is able to reasonably obtain all easements which are necessary to extend service relating thereto. The extension of services shall be completed within six (6) months of the date of written request of a sufficient number of persons to meet the requirements of this subsection (c)(1) who commit to subscribe for service, if the weather reasonably permits.

- (2) No person, public entity, firm or corporation shall be refused service arbitrarily. However, for unusual circumstances, such as a subscriber's request to locate his cable drop underground, existence of more than one hundred fifty feet of distance from distribution cable to connection of service to subscribers, or a density of less than ten subscribers per one thousand three hundred twenty cable-bearing strand feet of trunk or distribution cable, cable service or other service may be made available on the basis of a capital contribution in aid of construction, including cost of material, labor and easements. For the purpose of determining the amount of capital contribution in aid of construction to be borne by grantee and subscribers in the area in which cable service may be expanded, grantee will contribute an amount equal to the construction and other costs, multiplied by a fraction whose numerator equals the actual number of potential subscribers per one thousand three hundred twenty cable-bearing strand feet of its trunks or distribution cable, and whose denominator equals ten subscribers. The remainder of the construction and other costs will be charged to the potential subscribers when or if they subscribe on a pro rata basis. Grantee may require that the payment of the capital contribution in aid of construction borne by such potential subscribers be paid in advance. The subscriber shall be given a written estimate of such payment prior to the beginning of construction, and shall in no event be required to pay more than five percent over this estimate. In lieu of directly charging for construction costs, grantee may implement alternative pricing structures for services rendered which reflect disproportionate construction and related costs incidental to serving low density or other capital intensive areas.
- (3) Within one year after the grant of a franchise, final orders granting all necessary permits and authorizations which are required in the conduct of its business, including but not limited to any utility joint use attachment agreements, microwave carrier licenses, and any other permits, licenses, and authorizations to be granted by duly constituted regulatory agencies having jurisdiction over the operation of cable television systems or their associated microwave transmission facilities, shall have been received by the grantee. The grantee shall also have within six (6) months after grant of a franchise

and its obtaining of all required permits and licenses, an operable head end completed, and shall have extended energized trunk cable to at least 25% of residential dwellings in the franchise area, and the grantee will render service at least to an additional 25% of the residential dwellings in the franchise area within one year thereafter, and the grantee will render service at least to an additional 20% of the residential dwellings in the City each year thereafter until 100% of all areas included in the franchise area have been covered by and are accessible to energized trunk cable, subject to Section 16-27-12(c), and subject to lesser requirements at the discretion of the City Council upon a showing of good cause therefore by the grantee. However, the grantee will not be held liable for the completion as hereinabove set forth when delayed by an action of the City, or when it is prevented from doing so by circumstances beyond its control such as unavailability of materials, acts of nature or civil strife. This subsection (c)(3) does not apply to an incumbent cable television operator which has constructed its system within the City on the date of the passage of this ordinance.

- (4) Depth of new cable. When constructing underground facilities grantee shall place all new or replaced trunk and feeder cable at least 18 inches below ground level, except where otherwise provided by law, or except where allowed in writing by the City Engineer. "Drop" cables running from feeder cable to individual subscribers shall be placed so that the cable shall not interfere with the owner's reasonable use of their property, and so as to avoid gardens where reasonably possible.
- (5) Approval and inspection of new construction. Except for individual service drops, the grantee shall not run any line, make any attachment, or perform construction without the prior approval of the City Engineer or his designee. Such approval shall not be unreasonably withheld, and action shall be taken on any request for approval within three (3) business days of receipt of the request, or it shall be deemed granted. Nothing herein shall prevent the grantee from making reasonably necessary emergency repairs, subject to Section 16-27-6, provided that within two business days after the emergency construction is performed, the grantee shall inform the City Engineer or his designee of the work performed.

The City shall have the right to inspect the construction, operation and maintenance of the system by the grantee to insure the proper performance of the terms of this chapter.

In the event that grantee should fail to comply with the terms of this ordinance or any other City permit issued for construction, the City shall give the grantee written notice of such non-compliance and a reasonable time for correction in accordance with Sections 16-27-31 through 16-27-34. If the grantee fails to make the corrections within the reasonable time provided, the

City may do one of the following:

- A. Make such correction itself and charge the cost thereof to the grantee, which shall promptly pay the same; and/or
- B. Secure the proceeds from any financial performance instrument posted by the grantee.

16-27-13. Services to public buildings.

- (a) The grantee shall provide upon demand and without charge a minimum of one outlet of basic service to each governmental office building, fire station, police station, and public school building within the grantee's service area where the drop line from the feeder cable to said buildings or premises is less than one hundred fifty cable feet.
 - (1) The grantee shall provide at no charge to the City one outlet of basic service to each governmental office building, fire station, police station, and public school building within the service area where the drop line from the feeder cable to said buildings or premises is less than or equal to 150 cable feet.
 - (2) Where the distance from the drop line from the feeder cable to the said buildings or premises is more than 150 cable feet, then the grantee shall provide the one outlet for basic service upon written request from the entity owning or leasing the premises and upon the payment to the grantee for the service. Where grantee provides cable service in such cases as set out in this Subsection 16-27-13(a)(2) the City shall pay the grantee the incremental cost of such drop line in excess of one hundred fifty cable feet.
 - (3) The grantee shall provide additional outlets in any given building for which the City shall pay the incremental cost of installation, as well as the cost of any equipment necessary to ensure such distribution does not adversely affect the grantee's cable communication system. These outlets shall not be used to distribute or sell cable services on or out of such buildings; nor shall such outlets be located in common or public areas open to the public.
- (b) Users of such outlets shall hold the grantee harmless from any and all liability or claims arising out of their use of such outlets, including, but not limited to, those arising from copyright liability.

16-27-14. Emergency override.

Within six (6) months of the grant of a franchise grantee shall provide a shared emergency alert capability which when accessed by the telephone security code provided to the City by the grantee, will permit the City in times of emergency to override the audio of all channels on the cable system simultaneously. The system shall include the capability for emergency information and instruction to be given from the City's headquarters for disaster and emergency services. The City shall agree to indemnify, save and hold harmless grantee from and

against any liability resulting from the City's use of this emergency override. The City agrees to cooperate with other governmental entities regarding the use of the emergency override capabilities in order to prevent two or more municipalities from accessing the emergency override capability at the same time, and in order to share the use of said capability with other municipalities.

16-27-15. System requirements.

Any cable communications system permitted to be installed and operated hereunder:

- (a) Shall have a minimum capacity of twenty channels;
- (b) Shall be operationally capable of relaying to subscriber drops (i.e. terminals) those television or radio broadcast signals for the carriage of which the grantee is now or hereafter required by the Federal Communications Commission.
- (c) Future construction shall have, if technically practicable, the capacity for nonvoice return communication such that:
 - (1) Return communications are capable of being received and processed both at the head-end for the service area in which the communication originates and at a main head-end for the service area served by the grantee;
 - (2) At the option of the subscriber, no return signals will be communicated; and
 - (3) The system will include technical safeguards calculated to deter interception of return communications by third parties.
- (d) Shall distribute in color television signals which it receives in color.
- (e) Shall provide, at least one access channel upon written request of the Mayor or his authorized representative, for public, educational and governmental (PEG) use within six (6) months of written request. The access channel shall be carried throughout the service area and shall be made available to subscribers without additional charge; and
- (f) Shall provide, to the extent technically practicable, and upon written request from the Mayor, the necessary transmissions from a location designated by the City for the government access channel which is either the City Hall or which is within 150 feet of the existing feeder cable and transmit those signals over the cable communication system.
- (g) Except as otherwise provided by Federal or State law, when grantee first provides services to a subscriber, it shall install at no charge to the subscriber upon the subscriber's request a device in the subscriber's television reception system that allows the subscriber to receive broadcast or cable signals, and shall inform the subscriber in a clearly understandable manner of the subscriber's right to have the grantee install the device at no cost to the subscriber upon the installation of cable service. Nothing herein shall require the grantee to do more in respect to

subscriber's antenna system than to connect any such device to subscriber's antenna cable which runs into the subscriber's television.

- (h) Shall make available upon request by any subscribers receiving channels showing premium services and pay-per-view events a lockout device which prevents the unauthorized viewing of such channels.
- (i) All new system extensions shall have a minimum capacity of four hundred fifty (450) megahertz.
- (j) Each cable television system shall include equipment capable of providing standby power for headends. The equipment shall be so constructed as to automatically revert to the standby mode when the AC power returns. The system shall incorporate safeguards necessary to prevent injury to linemen resulting from a standby generator powering a "dead" utility line.

16-27-16. Educational and municipal services.

On reimbursement of actual costs for equipment, installation, periodic maintenance, and other directly associated costs, the grantee shall provide a return link, if technically practicable, permitting transmission of originated program material between:

- (a) Each public building within the service area designated by the City and each state-accredited public or private educational institution located within the service area that requests such installation; and
- (b) The head-end of the grantee.

16-27-17. PEG access services.

- (a) The grantee shall provide for or accommodate public access programming for public, educational and governmental purposes. Any incremental costs associated with PEG access can be passed through to subscribers by the grantee.
- (b) The purpose of the public access channel is to provide a channel through which citizens of civic organizations, cultural and arts organizations can promote and encourage programming that will be of benefit to the community within the service area.
- (c) Access channel assignments shall be made by the grantee in consultation with the City and shall be uniform throughout the grantee's service area.

16-27-18. Compatibility and interconnection.

All cable communication systems franchised hereunder shall, insofar as technically and economically feasible, and provided that doing so shall not require a substantial degradation of grantee's system or signal, be compatible with and able to tie into all other systems within and adjacent to the City.

16-27-19. Franchise fee.

- (a) Grantee shall pay to the City a franchise fee equal to five percent of the gross revenues received by the grantee from the operation of the cable communication system. Franchise fee payments due to the City under this section shall be computed quarterly. For the purpose of the franchise fee payment computation, the applicable accounting period shall be a calendar year, unless otherwise agreed to in writing by the City and grantee.
- (b) The quarterly franchise fee payments shall be due and payable ninety days after the close of the quarter. Each payment shall be accompanied by a brief report from a representative of grantee showing the basis for the computation and a written statement signed under penalty of perjury by an officer of the grantee, which identifies in detail the sources and amounts of gross revenues received by the grantee during the quarter for which payment is made. No acceptance of any payment shall be construed as an accord that the amount paid is in fact the correct amount, nor shall such acceptance of payment be construed as a release of any claim the City may have for further or additional sums payable under the provisions of this permit.
- (c) Any franchise fees which remain unpaid after the dates specified in subsection (b) of this section shall be delinquent and shall thereafter accrue interest at the rate of return on the average of all investments of the City during the period for which such funds remain unpaid until paid.
- (d) The grantee shall, upon reasonable notice from the City, to the extent allowed by the Cable Act or other Federal or State law, make available to the City or its designated representatives full billing records for inspection and audit, provided that, the City and grantee shall take reasonable precautions to protect the confidentiality of information dealing with the content of subscriber viewing habits or subscriptions. Notwithstanding any provision of this subsection (d), nothing herein shall be construed to grant any right or benefit upon any third party, nor shall it be used as a basis of a claim against the City by a third party. If the results of the audit show an underpayment of greater than five percent, the grantee will pay all costs associated with the audit in addition to any other amounts owed as shown by the audit. If the results of the audit show an underpayment of greater than ten percent, the grantee will pay the cost of the audit plus fifty percent of the total error as penalty in addition to any amount owed as shown by the audit. If the results of the audit show an underpayment of less than five percent or an overpayment, City shall pay its own costs associated with the audit. The City shall indemnify and hold harmless the grantee, its officers, agents and employees, from and against all claims, damages, loss and judgments resulting from an error or omission of the City, its officers, agents or employees in the use or disclosure of the information required or obtained pursuant to this subsection (d).

- (e) Upon request from the City, and subject to the Cable Act, and Federal and State law, grantee shall provide the City with documents or data of grantee in a form which allow the City to audit monies collected from grantee's subscribers in Sandy City for services covered by this chapter which do not violate privacy protections of Federal or State law, including, where lawful, the account number and amount collected from each subscriber that grantee serviced within the City during the period requested by the City which grantee is able to provide. Where requested by the City, and where providing this information would assist the City in understanding the data provided to the City, the Grantee shall send with each such data compilation a paper document containing the file layout explaining what information is contained in the data compilation, including a listing and placement of all data fields in each record. The City shall indemnify and hold harmless the grantee, its officers, agents and employees, from and against all claims, damages, loss and judgments resulting from an error or omission of the City, its officers, agents or employees in the use or disclosure of the information required or obtained pursuant to this subsection (e).
- (f) In the event the results of the audit are disputed, the City may elect to arbitrate the dispute or take any other appropriate action. In the event the City elects to arbitrate, the City and the grantee shall each select an independent auditor at their own cost. The two auditors will agree upon the results of the audit. If the two independent auditors cannot agree upon the results of the audit, a third auditor will be selected by the two independent auditors to make a final determination. The determination of the third independent auditor will be final.
- (g) The period of limitation for recovery of any franchise fee payable hereunder shall be five years from the date on which payment by the grantee is due. Unless within five years from and after said payment due date, the City initiates a lawsuit for recovery of such franchise fees in a court of competent jurisdiction, such recovery shall be barred, and the City shall be estopped from asserting any claims whatsoever against the grantee relating to any such alleged deficiencies.
- (h) If grantee challenges the right of the City to collect the franchise fee provided by this chapter, any relief requested by grantee and awarded to it by virtue of such challenge shall be prospective only from and after the date of the filing of the initial pleading seeking such relief in a court of competent jurisdiction. Grantee shall waive any and all claims or rights to collect back from the City or obtain credit therefor against future payment obligations, any amounts collected by the City prior to the filing of the initial pleading seeking such relief in a court of competent jurisdiction. In the event grantee's challenge to any franchise fee payments should result in an initial judgment in its favor, grantee shall continue to make all franchise fee payments pending an appeal by the City to a court of last resort. In the event the court of last resort determines that the City is not entitled to collect any or all of the franchise fee, the City shall refund to grantee all payments made subsequent to the filing of the initial action by grantee, together

with interest on such monies determined by the actual rate of return on the average of all investments of City during the period for which such funds were paid after the judgment.

16-27-20. Rates and charges.

- (a) The grantee shall file with the City on or about December 31 of each year a full schedule of all subscriber and user rates and all other charges including, but not limited to, pay TV, lease channel and discrete services, made in connection with the cable communications system.
 - (1) All rates shall be published and on file with the City.
 - (2) The grantee shall not discriminate in the assessment, levy, charge, imposition or collection of rates on the basis of age, race, creed, color, religion, national origin, sex or marital status.
- (b) Nothing in this chapter shall be construed to prohibit the reduction or waiving of charges in conjunction with promotional campaigns for the purpose of attracting subscribers or users.
- (c) The grantee may require all subscribers to pay for basic service not more than one (1) month in advance. The grantee shall require no other advancement of payment for basic service, provided, however, that nothing herein shall be construed to prohibit an advancement of payment for installation of cable communications services.
- (d) The grantee shall neither impose nor collect any additional charge for the disconnection of any installation or outlet.
- (e) In the event that a subscriber fails to pay as properly due and owing a fee or charge, the grantee may disconnect the subscriber's service outlet, upon giving ten (10) days written notice thereof.
- (f) The grantee shall establish and conform to the following policy regarding refunds to subscribers and users:
 - (1) If the grantee collects a deposit or advance charge on any service or equipment requested by a subscriber or user, the grantee shall provide such service or equipment within thirty (30) days of the collection of the deposit or charge or it shall refund such deposit or charge within five (5) days thereafter.
 - A. Nothing in this section shall be construed to relieve the grantee of any responsibility to subscribers or users under any contractual agreements into which it enters with them.
 - B. Nothing in this section shall be construed as limiting the grantee's liability for fines or penalties which may be imposed under this ordinance or any agreement awarded in accordance herewith for violation or breach of any

of their provisions.

- C. Nothing in this section shall be construed to limit the grantee's liability for damages because of its failure to provide the service for which the deposit or charge was made.
- (2) In the event that a subscriber terminates basic service during the first twelve (12) months of service because of the failure of the grantee to render the service in accordance with the requirement set forth in this Ordinance or in any agreement awarded in accordance herewith, the grantee shall refund to such subscriber an amount equal to the initial applicable installation or reconnection charge paid by the subscriber.
 - A. In the event that such subscriber has made an advance payment the amount so advanced shall be refunded to such subscriber by the grantee. Nothing in this provision shall be construed to relieve the grantee of any liability established under any other provision of this ordinance.
- (3) In the event that a subscriber terminates basic service prior to the end of a pre-paid period, the pro-rata portion of any pre-paid subscriber fee which represents payment for services which are no longer to be rendered shall be refunded promptly, but in no case more than thirty (30) days after receipt of the request for termination.
- (f) The grantee shall not charge a converter security deposit greater than such converter's actual cost to the grantee.
 - (1) Any converter security deposit collected by the grantee shall be returned to the subscriber twenty-four (24) months after the installation of such converter or upon termination of service by the subscriber and return of such converter undamaged, with allowance for reasonable wear and tear, and payment of any outstanding balance due and payable, whichever occurs first.

16-27-21. Renewal of franchise.

- (a) Proceedings relating to the renewal of the grantee's franchise shall be governed by and comply with the provisions of Federal and State law in effect at the time of renewal, including Section 626 of the Cable Act (as such existed as of the effective date of the Cable Act), unless the procedures and substantive protections set forth therein shall be deemed to be preempted and superseded by the provisions of any subsequent provision of Federal or State law.
- (b) In addition to the procedures set forth in applicable Federal and State law, the City shall notify grantee of its preliminary assessments regarding the identity of future cable-related community needs and interests, as well as the past performance of grantee under the then current franchise term. The preliminary assessment shall be provided to the grantee within four months after the expiration of the period referred to in Subsection 626(a) of the Cable Act, or such

other time as any amendment to the Cable Act shall require.

- (c) Notwithstanding anything to the contrary set forth in this section, at any time during the term of the then current franchise, while affording the public appropriate notice and opportunity to comment, the City and grantee may agree to undertake and finalize negotiations regarding renewal of the then current franchise and the City may grant a renewal thereof. The terms set forth in this section shall be construed to be consistent with the express provisions of applicable Federal and State law.

16-27-22. Termination of Franchise.

- (a) Notification of Termination. Grantee may, at its option, terminate the franchise granted and surrender all rights and privileges associated with the franchise upon filing with the City a written notification of its intent to terminate the franchise and surrender all rights thereunder. Any such termination shall not become effective for a period of ninety (90) days from the date on which grantee files notification with the City. During this ninety (90) day period, grantee may withdraw any notification of termination filed under this section, in which case the franchise and the rights and responsibilities of the parties thereunder will continue unimpaired as if such notification of termination had never been filed.
- (b) Removal or Abandonment of Property. Notwithstanding anything to the contrary contained in subsection (a) of this Section, upon termination of the franchise, grantee or its successors and assigns shall retain ownership of the cable communications system and shall be entitled at its option and expense to remove the Cable communications system from all public and private property or to abandon said cable communications system. The grantee shall not remove any underground cable or conduit which requires trenching or other opening of the public streets or ways along the extension of cable to be removed, except as hereinafter provided. Subject to Federal and State law, the grantee shall remove, at its sole cost and expense, any underground extension thereof or otherwise which is ordered to be removed by the City based upon a determination, in the sole discretion of the City's Department of Public Works, or his designee, that removal is required in order to eliminate or prevent a hazardous condition or promote future utilization of the streets for public purposes. Any order by the City to remove cable or conduit shall be mailed to the grantee not later than thirty (30) calendar days following the date of expiration of the franchise in the manner provided in Section 16-27-39 of this chapter. A grantee shall file written notice with the City's Director of Public Works not later than thirty (30) calendar days following the date of expiration or termination of the franchise of its intention to remove cable intended to be removed and a schedule for removal by location. The schedule and timing of removal shall be subject to approval and regulation by the Director of Public Works. Removal shall be completed not later than twelve (12) months following the date of expiration of the franchise. Underground cable and conduit in the streets which is not removed shall be deemed abandoned and

title thereto shall be vested in the City.

Upon expiration of the franchise, if the franchise is not renewed and if neither the City nor an assignee purchase the grantee's system, the grantee, at its sole expense, shall, subject to Federal and State law, unless relieved of the obligation by the City, remove from the streets all above-ground elements of its cable television system, including, but not limited to amplifier boxes, pedestal-mounted terminal boxes, and cable attached to or suspended from poles, which are not purchased by the City or its assignee.

The grantee shall apply for and obtain such encroachment permits, licenses, authorizations or other approvals and pay such fees and deposit such security as required by applicable ordinance of the City, shall conduct and complete the work of removal in compliance with all applicable ordinances, and shall restore the streets to substantially the same condition they were in before the work of removal commenced. The work of removal shall be completed not later than one (1) year following the date of expiration of the franchise.

- (c) Restoration of Property. Should grantee elect to remove its plant, structures and/or equipment upon termination of the franchise, grantee shall refill, at its own expense, any excavation that shall be made by it and shall leave all public ways and places in as good condition as that prevailing prior to grantee's removal of its equipment and appliances, without affecting electrical or telephone cables, wires, or attachments and poles after removal. The liability insurance and indemnity as provided under Section 16-27-29 herein shall continue in full force and effect during the period of removal and until substantial compliance by grantee with the terms and conditions of this paragraph.

- (d) Restoration by City, Reimbursement of Costs.

In the event of a failure by grantee to complete any work required by subsection (c) above, or any other work required by City's ordinance within the time as may be established and to the mutual satisfaction of the City and grantee, the City may cause such work to be done and grantee shall reimburse the City the reasonable costs thereof within ninety (90) days after receipt of an itemized list of such costs.

- (e) Termination of Franchise by City. The franchise may be terminated by the City only after a hearing before the governing body of the City meeting all requirements of due process, and the franchise may be terminated only in the event that grantee violates a material provision of the franchise. Prior to any hearing, grantee shall be given ninety (90) days notice in writing, by certified mail, which notice shall state with particularity the grounds upon which the City relies. Said hearing shall take place if, at the end of the ninety (90) day period, grantee has not cured the matter which provides grounds for termination or has not taken reasonable steps within said time period toward the curing of said matter. Any such hearing shall be a full public proceeding affording due process, and any termination action will be subject to full and final court review before it

becomes final and operative. Upon any such final action terminating the franchise, grantee shall be entitled to receive, from the City or from any third party assuming control over the cable communications system, a payment equal to the fair market value of the cable communications system as a going concern.

16-27-23. Conditions of sale.

- (a) In the event the franchise is lawfully revoked by the City, grantee shall be given six months to transfer its cable system to a qualified third party. During the period before sale the grantee may continue to operate pursuant to the terms of its prior franchise and, without limitation, continue to receive all revenues derived from or related thereto subject to payment of the required franchise fees.

In the event that grantee ceases to operate the cable system or any part thereof due to an act of God, strike, civil unrest, war, or other similar event beyond its control, then the City may request that grantee demonstrate its ability to bring the cable system, or nonfunctioning part thereof, into operation according to the terms of this chapter within a reasonable time. If grantee is unable to do so, the City may, upon notice to grantee, allow another operator or itself to take over operation of the cable system, subject to the payment within a reasonable time for the value of the cable system as provided in subparagraph (b).

- (b) If the City either acquires ownership of the cable communications system or by its actions effects a transfer of ownership of the cable system, the acquisition or transfer shall be at a fair market value, determined on the basis of the cable system valued as a going concern, but with no value allocated to the franchise itself.
- (c) Without waiving or establishing the City's right to proceed by condemnation the City may agree to have the fair market value determined by two cable television experts, one chosen by the grantee and one chosen by the City. If these experts cannot agree, the disagreement will be resolved through pendulum arbitration by an arbitrator chosen by the two experts.

16-27-24. Transfer of franchise.

Grantee's right, title, or interest in the franchise, and/or its cable system, shall not be sold, transferred, assigned or otherwise encumbered without the prior consent of the City, which shall not be unreasonably withheld, except for a transfer in trust, by mortgage, by other hypothecation, or by assignment of any rights, title, or interest of grantee in order to secure indebtedness, which shall not require the City's consent; provided, however, that without consent and upon notice which shall be no less than thirty days, grantee may sell, transfer or assign its right, title and interest in the franchise to an affiliate.

The proposed assignee must show technical ability, financial capability, legal qualifications and general character qualifications as reasonably determined by the City, and must agree to comply with all provisions of the franchise and such conditions as may be

prescribed by the City Council by resolution. The City shall be deemed to have denied a proposed transfer or assignment in the event that its consent is not communicated in writing to grantee within one hundred twenty (120) days following receipt of written notice of the proposed transfer or assignment.

- (a) The grantee shall promptly notify the City of any actual or proposed change in, or transfer of, or acquisition by any other party of, control of grantee. The word "control" as used herein is not limited to major stockholders but includes actual working control in whatever manner. Every change, transfer, or acquisition of control of the grantee shall make the franchise subject to cancellation unless and until the City shall have consented thereto, which consent shall not be unreasonably withheld. For the purpose of determining whether it shall consent to such change, transfer or acquisition of control, the City may inquire into the qualifications of the prospective controlling party and the grantee shall assist the City in any such inquiry.
- (b) A rebuttable presumption that a transfer of control has occurred shall arise upon the acquisition or accumulation by any person or group of persons of fifty percent (50%) of the voting interest of the grantee.
- (c) The consent or approval of the City to any transfer of the franchise shall not constitute a waiver or release of the rights of the City in and to the streets, and any transfer shall by its terms, be expressly subordinate to the terms and conditions of a franchise.
- (d) In the absence of extraordinary circumstances, the City may not approve any transfer or assignment of a franchise prior to substantial completion of construction of proposed systems.
- (e) The City reserves the right of first refusal to purchase a cable system at the price and on the same terms agreed to by the grantee. Upon receipt of any bona fide offer for the sale of any part of the system, the grantee shall give written notice of the proposed sale or disposition, including the proposed date of the sale or disposition and the terms thereof to the City not less than 120 days before the sale. In order to exercise this first right of refusal the City shall then give a signed written notice to the grantee of its intent to meet all the terms of the sale not less than 30 days before the sale to the third party. However, should the sale of the system be part of a unified sale of the grantee's entire system, including system parts which extend substantially beyond the City's limits, then this subsection (e) shall not be applicable.

16-27-25. Compliance with FCC regulations.

Grantee shall comply with all requirements and regulations of the Federal Communications Commission (FCC).

16-27-26. Books and records.

The City may review such of the grantee's books and records as are reasonably necessary to monitor compliance with the terms hereof subject to the Cable Act, and Federal and State law. Such records shall include, but shall not be limited to any public records required to be kept by the grantee pursuant to the rules and regulations of the FCC, records of maintenance and repair, customer service, construction and repair, and records relating to receipts from customers. To the extent allowable by law the City will treat as confidential or proprietary in nature information reasonably designated by grantee as such and to only disclose it to employees, representatives, and agents thereof who have a need to know; or in order to enforce the provisions hereof. The City shall indemnify and hold harmless the grantee, its officers, agents and employees, from and against all claims, damages, loss and judgments resulting from an error or omission of the City, its officers, agents or employees in the use or disclosure of the information required or obtained pursuant to this section.

16-27-27. Periodic review.

Beginning on a date established by the City and then annually thereafter, the City may on its own initiative, and shall at the request of the grantee, schedule a public meeting for the purpose of identifying the cable-related community needs and interests, and reviewing the performance of the grantee under the franchise. The City shall notify grantee of the time and place of such meeting and provide the grantee with an opportunity to be heard. The public shall be afforded appropriate notice and opportunity for comment. Within four months of such meeting, the City shall provide grantee with a written copy of its findings.

16-27-28. Reporting requirement.

At a minimum the grantee shall provide the City annually the following information:

- (a) A report of the previous year's performance on the expansion plan required by Section 16-27-12, including, but not limited to, service begun or discontinued during that year and a new one-year plan;
- (b) A financial summary to the extent reasonably possible of the grantee's operation in the City, including a statement of income, revenues, and aggregate operating expenses, to the extent these figures are kept by the grantee, prepared in accordance with generally accepted accounting principles and certified by grantee's chief financial officer;
- (c) A list of the grantee's officers, members of its board of directors and other principals;
- (d) A written report containing the FCC proof of performance tests for the system;
- (e) A current map or set of maps drawn to scale showing all equipment installed and in place, if requested by the City; and
- (f) A description of all petitions, applications, communications and reports submitted

by the grantee to any State or Federal entity in respect to any matters affecting cable television system's operations authorized by the franchise. Copies shall be provided to City upon request.

16-27-29. Insurance, indemnification, bonds or other surety.

- (a) Grantee shall maintain in full force and effect, at its own cost and expense, during the term of the franchise, insurance meeting the requirements of this section against claims for injuries to persons or damage to property which may arise from or in connection with the performance of its service and operations under its franchise by the grantee, its officers, agents, employees or subcontractors.
- (b) Minimum Limits of Insurance. Grantee shall maintain limits no less than:
 - (1) General Liability: \$ 1,000,000 combined single limit per occurrence for bodily injury, personal injury and property damage. Broad Form Commercial General Liability is required.
 - (2) Automobile Liability: \$ 1,000,000 combined single limit per accident for bodily injury and property damage. "Any Auto" coverage is required.
 - (3) Workers' Compensation and Employers Liability: Workers' compensation limits as required by the Labor Code of the State of Utah and Employers Liability limits of \$100,000 per accident.
- (c) Deductibles and Self-insured Retentions. Any deductibles or self-insured retentions must be declared to the City, and any deductibles above five percent (5%) must be approved by Sandy City Risk Manager, which shall not be unreasonably withheld. Subject to the foregoing provision, the City Risk Manager may require that either: the insurer may be required to reduce or eliminate such deductibles or self-insured retentions as respects Sandy City, its officers, officials and employees; or the grantee may be required to procure a bond guaranteeing payment of losses and related investigations, claim distribution and defense expenses.
- (d) Notice of Incident or Accident. Grantee shall disclose to the City all incidents or occurrences of accident, injury, and/or property damage covered by the insurance policy or policies in or relating to the City in which the City has received a notice of claim, or in which the City, or its officers, officials, employees or volunteers have been named as codefendants, or where a notice of claim has been made on the City, or where the plaintiff or plaintiff's counsel has expressed an intent to name the City, its officers, officials, employees or volunteers as codefendants.
- (e) Insurance Provisions. The policies are to contain, or be endorsed to contain, the following provisions:
 - (1) General Liability and Automobile Liability Coverages

- A. Sandy City, its officers, officials, employees and volunteers shall be covered as additional insureds as respects: liability arising out of activities performed by or on behalf of the grantee; products and completed operations of the grantee; premises owned, leased, hired or borrowed by the grantee. The coverage shall contain no special limitations on the scope of protection afforded to Sandy City, its officers, officials, employees or volunteers.
 - B. The grantee's insurance coverage shall be a primary insurance for Sandy City, its officers, officials, employees and volunteers but solely as respects acts or omissions of the grantee. Any insurance or self-insurance maintained by Sandy City, its officers, officials, employees or volunteers shall be in excess of the grantee's insurance and shall not contribute with it.
 - C. Any failure to comply with reporting provisions of the policies shall not affect coverage provided to Sandy City, its officers, officials, employees or volunteers.
 - D. The grantee's insurance shall apply separately to each insured against whom claim is made or suit is brought, except with respects to the limits of the insurer's liability.
- (2) Workers' Compensation and Employers Liability Coverage. The insurer shall agree to waive all rights of subrogation against Sandy City, its officers, officials, employees and volunteers for losses arising from work performed by the grantee for Sandy City.
- (3) All Coverages. Each insurance policy required by this clause shall be endorsed to state that coverage shall not be suspended, voided, cancelled by either party, reduced in coverage or in limits except after thirty (30) days' prior written notice by certified mail, return receipt requested, has been given to Sandy City.
- (f) Acceptability of Insurers. Insurance is to be placed with insurers with a Best's rating of no less than A:VII, unless approved by the City's Director of Personnel and Management Services.
- (g) Verification of Coverage. Grantee shall furnish Sandy City with certificates of insurance and with original endorsements effecting coverage required by this clause at the time the grantee accepts the franchise, when its insurance company or coverage substantially change, and at such other times as the City may request. The certificates and endorsements are to be signed by a person authorized by that insurer to bind coverage on its behalf. The certificates and endorsements are to be on forms provided by Sandy City. Sandy City reserves the right to require prompt production of complete, certified copies of all insurance policies required in this chapter with all endorsements in the event that the City, its officers, agents,

volunteers or employees or any of them are named as defendants in a lawsuit, or written claim delivered or mailed to the City, or where a demand for arbitration is made based upon a contract with the City, and where the damages for the injury claimed have a reasonable likelihood of exceeding the deductible amount of the grantee's insurance policy.

- (h) Subcontractors. Grantee shall include all subcontractors as insureds under its policies or shall furnish separate certificates and endorsements for each subcontractor. All coverages for subcontractors shall be subject to all of the requirements stated herein.
- (i) Consumer Price Index. In the event that the value of liability insurance provided for herein shall decrease by more than 20% in September 1, 1992 dollars, according to changes in the Consumer Price Index of consumer goods and services kept by the U.S. Dept. of Labor, Bureau of Labor Statistics, or such other comparable index in the event the Consumer Price Index is no longer kept, then the grantee shall supplement the amount of insurance coverage so that it is at least equal to the amounts provided for herein in September 1, 1992 dollars according to the Consumer Price Index.
- (j) Indemnification, hold harmless. The grantee shall indemnify, save and hold harmless, and defend the City, its officers, boards, and employees, from and against any liability for damages and for any liability or claims resulting from property damage or bodily injury, (including accidental death), which arise out of the grantee's construction, operation, or maintenance of its cable communication system, including, but not limited to, reasonable attorney's fees and costs during third party litigation. This provision will not apply in the event of a value dispute on sale, or to damages which arise from the City's sole negligence.
- (k) Self Insurance. The City Risk Manager may approve self- insurance which substantially meets the purposes and requirements of this section for a grantee which demonstrates adequate financial strength to reasonably assure the ability to meet these insurance requirements are intended to meet, in the City's reasonable discretion. The City Risk Manager may also approve insurance with a third person which substantially meets the purposes and requirements of this section in his reasonable discretion.

16-27-30. Security fund.

- (a) Within thirty days after the effective date of a franchise grant, grantee shall deposit into a bank account established by the City the sum of twenty thousand dollars (\$20,000) as security for its faithful performance on all provisions of this chapter and the Cable Television Services Standards Ordinance; its compliance with all orders, permits and directions of the City; and its payment of any claim, lien or tax due the City which arises by reason of construction, operation or maintenance of the system. Interest accrued on this deposit shall be rebated to the

grantee at the end of each calendar year. Grantee shall not use this security fund as security for any other purpose. In the event that the \$20,000 security deposit provided for in this Subsection (a) shall decline in value by more than 25% in September 1, 1992 dollars, according to changes in the Consumer Price Index of consumer goods and services kept by the U.S. Dept. of Labor, Bureau of Labor Statistics (the "C.P.I."), or such other comparable index in the event the Consumer Price Index is no longer kept, then grantee shall supplement the security deposit amount such that it shall not be less than \$20,000 in September 1, 1992 dollars.

- (b) No funds shall be drawn from the security fund without providing the grantee the opportunity to cure the default as provided in Sections 16-27-31 through 16-27-34 below or other applicable cure provisions.
- (c) Within thirty days of notice that any amount has been withdrawn from the security fund, grantee shall deposit a sum sufficient to restore the security fund to the amount of \$20,000 in September 1, 1992 dollars according to the C.P.I.
- (d) In lieu of the security fund set forth in this Section 16-27-30, the City and grantee may agree that a guarantee from an entity and in a form reasonably acceptable to the City may be sufficient to satisfy grantee's obligations hereunder. In the event that the City draws down, or makes a claim against such security under this subsection (d), or that the security declines in real value, or a combination of the above, in excess of 25% at any time, then the grantee shall provide additional security to the City by security or deposit meeting the requirements of this section, sufficient in value to meet the \$20,000 amount in September 1, 1992 dollars as provided in this section.

6-27-31. Notice of violation.

In the event that the City believes that the grantee has not complied with the terms of the franchise or this chapter, it shall notify grantee of the nature of the alleged noncompliance.

16-27-32. Grantee's right to cure or respond.

Grantee shall have thirty days from receipt of the notice described in Section 16-27-31 to:

- (a) Respond to the City contesting the assertion of noncompliance; or
- (b) Cure such default or, in the event that, by the nature of default, such default cannot be cured within the thirty-day period, initiate reasonable steps to remedy such default and notify the City of the steps being taken and the projected date that they will be completed.

16-27-33. Public hearing.

In the event that grantee fails to respond to the notice described in Section 16-27-31 pursuant to the procedures set forth in Section 16-27-32, or in the event that the grantee has not

initiated reasonable steps to cure the alleged default within sixty days after the grantee is notified of the alleged default pursuant to Section 16-27-31, the City shall schedule a public hearing to investigate the default. Such public hearing shall be held by the Mayor or his or her designee at a time which is no less than five business days therefrom. The City shall notify the grantee of the time and place of such meeting and provide the grantee with an opportunity to be heard.

16-27-34. Violation of certain specified sections.

The notice, cure and public hearing provisions of Sections 16- 27-31, 16-27-32 and 16-27-33 shall not be applicable to any violations of Sections 16-27-10, 16-27-14, 16-27-29 or other violations which may immediately affect the health, safety and welfare of the City. In the event of such violations the City may demand the grantee immediately cure the violation. The City may enforce such a cure requirement by any or all applicable remedies at law or equity.

16-27-35. Enforcement.

- (a) Subject to Sections 16-27-30 through 16-27-34 and applicable Federal and State law, in the event the City determines that grantee has failed to substantially comply with any material provision of the franchise, the City may, in addition to any other remedies contained in this Chapter, including those in Section 16-27-12(c)(5):
 - (1) Foreclose on all or any part of any security provided under this chapter or other related ordinances, if any, including, without limitation, any bonds or other surety; provided, however, the foreclosure shall only be in such a manner and in such amount as the City reasonably determines is necessary to remedy the default;
 - (2) Commence an action at law for monetary damages or seek other equitable relief;
 - (3) Subject to applicable Federal, State and local law, in the case of a substantial default of Subsections 16-27-10, 16- 27-11, 16-27-14, 16-27-25, or subsection 16-27-12(c) of the franchising agreement, revoke the franchise agreement; or
 - (5) Seek specific performance of any provision, which reasonably lends itself to such remedy, as an alternative to damages;
 - (6) Exercise any right or remedy available at law or in equity;
 - (7) Impose penalties pursuant to Section 16-27-36 hereof.
- (b) The grantee shall not be relieved of any of its obligations to comply promptly with any provision of the franchise by reason of any failure of the City to enforce prompt compliance.

16-27-36. Fines and penalties.

- (a) Subject to Sections 16-27-30 through 16-27-34 above, the City may impose a

civil penalty on the grantee up to the following amounts per day or part thereof that the following violations occur or continue:

- (1) Two hundred dollars for any failure to complete system construction in accordance with grantee's construction obligations contained in the Cable Communication Ordinance or franchise grant;
 - (2) One hundred dollars for any failure to provide data, documents, reports or information to the City during a system review, as detailed in Section 16-27-27 hereof;
 - (3) Seventy-five dollars for any failure to comply with any of the provisions of this chapter for which a damage is not otherwise specifically provided in the Master Cable Communication Ordinance or franchise grant.
- (b) Each violation of any provision of this chapter shall be considered a separate violation for which a separate damage can be imposed.

16-27-37. Unauthorized reception.

In addition to those criminal and civil remedies provided by State and Federal law, it is a class B misdemeanor for any person, firm, or corporation to create or make use of any unauthorized connection, whether physically, electrically, acoustically, inductively, or otherwise, with any part of a cable communication system without the express consent of grantee. It is a misdemeanor for any person to tamper with, remove or injure any property, equipment or part of the cable system or any means of receiving cable service or other services provided thereto.

16-27-38. Notice of work in right-of-way.

Grantee shall notify the City Engineering Department fourteen days in advance and take reasonable steps to notify the residents in any area where construction work involving excavation of the right-of-way is to be performed at least four days before the work is to be performed. This notification shall not be required in the event of emergency repair work or individual subscriber installation.

16-27-39. Notices.

Any and all notices between the City or the grantee herein provided for or permitted under this chapter or by law shall be in writing and shall be deemed duly served when deposited in the United States mail, certified, postage prepaid, return receipt requested, addressed to grantee or the City at the address of each at the time of the granting of a franchise, or at such other address specified by the City or the grantee in a notice given pursuant to this Section as the address for service of notice on it. If the grantee changes its address during the term of its franchise, then it shall publish notice thereof in a newspaper of local general circulation at least twice. For purposes of this section, the grantee's office shall include both its local and national office addresses. However, failure by the City to provide notice to both offices by inadvertence or neglect shall not be a basis for a claim against the City, or a defense against City action under

this Chapter.

16-27-40. Procedures for Application for Additional Franchise Requests.

- (a) Scope and Contents. All applications for a new franchise shall be filed in conformance with and subject to the provisions of this Chapter. This Chapter shall not be construed to prescribe the detail in which the applicant shall make its presentation nor in any way to restrict the scope of its presentation. However, at a minimum, the following matters must be carefully covered and in such detail that the City can make fully informed judgments concerning the adequacy of the proposal and applicant's legal, character, financial, technical and other qualifications to construct and operate a Cable Television System in City.
- (b) Franchise Area. (1) The applicant shall submit sufficiently detailed information to allow the City to determine whether the size of the requested franchise is in the public interest, considering the size of the area requested relative to the technical, fiscal and legal qualifications of the Applicant; the potential for development in the near future for the area requested, and the extent to which existing cable operators have installed facilities and equipment in the area.
- (c) Legal Qualifications.
 - (1) Identification of Applicant. All applications shall contain the name, address and telephone number of the applicant and of the principal or the representative to whom inquiries should be made.
 - (2) Ownership Information. The applicant shall identify persons or other entities having an ownership interest in the applicant, and for each such entity shall provide information as to names, addresses, amount of interest, type of interest, basis of acquiring ownership, existence of any buy-out agreements, and ownership interests in other media.
 - (3) Affiliates, Subscribers and Parent Companies. Applicant shall provide full identification and ownership details, as in paragraph (2) above, for all affiliates, subsidiaries and parent companies of applicant.
- (d) Character Qualifications.
 - (1) Litigation and Proceedings. Applicant shall supply all records applicable to any past or current involvement of the applicant or any of its principals or managers as a party in criminal or civil proceedings. The application shall also supply detailed information concerning whether the applicant or any principal, owner, director or manager of the applicant has ever been subject to a penalty for failure to comply with any cable television franchise, has been involved in any legal action involving any franchising authority, or has ever had any license of any type revoked or suspended, or had renewal denied.

- (2) Other Cable System Operations. Applicant shall provide information as to other cable systems (including SMATV) owned by or affiliated with the applicant, the principals, or managers, including location, miles of plant, percent completed, density of area served, number of homes passed, number of subscribers, channel capacity, services offered, rates charged and market penetration.
- A. Financial Plan. Each applicant must describe in detail the financial plan for the construction and initial operation of the proposed cable communications system and provide proof of financial capability. Proof of financial capability shall include:
- (i) A showing of sources and amount of equity capital. If equity contribution is borrowed, describe collateral and terms of the loan. All equity commitments must be evidenced by appropriate documentation.
 - (ii) A showing of sources, amount and terms of debt capital, both primary and secondary accompanied by appropriate documentation. If funding is to be provided by a parent or affiliated entry, its source of funding must also be documented.
- B. Pro Forma Financial Statements. Pro forma financial statements are required for a minimum of five (5) years beginning with the date the franchise is accepted. Such pro forma shall include income statements, sources and uses of funds, loan amortization information, anticipated capital expenditures, construction costs, depreciation schedules, and operating expenses, along with detailed assumptions on which the projections are based.
- C. If the applicant is an existing entity, a certified financial report for the last two (2) years shall be submitted or, if existing for less than two (2) years, for such period of existence.
- (e) Technical Qualifications. Describe any qualifications and cable system experience of applicant, including, but not limited to, the ownership, construction, management, and operation of other cable communications systems specifying the manner in which applicant participated; available personnel with technical qualifications and experience committed to the proposed system design, construction and operation; construction contractors to be used, if any; and technical consultants, if any. Indicate the type of participation and the qualifications of persons, consultants, contractors, etc. whose services will be utilized.
- (f). System Construction Plan. The applicant shall submit to the office of the City Administrator or his designee a detailed construction plan supported by detailed maps indicating areas of construction and projected timeframes in six (6)-month increments and showing the location of the facilities of any existing grantee of a

franchise within or immediately adjacent to these areas. The applicant shall demonstrate that sufficient pole and conduit space exists for the placement of its facilities and shall provide a copy of any agreement between the applicant and the utility providing for the use of any utility facilities.

- (g) System Design-Layout and Equipment. The City seeks a comprehensive, but concise, description of the proposed system design. Such description shall include the system configuration, and manufacturer and model of each type of equipment used, a spectrum utilization chart, and a complete list of all services, video or otherwise which will be offered.
- (h) Customer Services. The applicant shall set forth detailed plans for system maintenance, customer complaints, billing procedures and inquiries, subscriber privacy, and policies related to outages.
- (i) Impact of an Additional Grantee. To assist the City Council in making its evaluation of the impact of an additional grantee, the applicant may be required to provide detailed information relating to:
 - (1) The extent of installation of facilities and equipment of existing cable operators, detailing the per-strand- mile density of areas served, unserved areas and the per-strand- mile density of such and the location of the facilities and equipment of the existing operators in the area for which the applicant is applying;
 - (2) The per-strand-mile densities of the areas the applicant proposes to serve and the extent to which the applicant intends to utilize bulk contracts;
 - (3) The economic justification, if any, for issuing a franchise to a subsequent applicant;
 - (4) The impact of the proposed franchise on private property rights;
 - (5) The impact of the proposed franchise on public convenience;
 - (6) The public need for such franchise;
 - (7) The potential benefit for such franchise; and
 - (8) Any other relevant factors.

16-27-41. Review of Application for New Franchise.

- (a) Initial Review. Upon the submission of an application for a new franchise, the City shall review the application to ensure that all information provided is complete and correct and to be able to determine whether the applicant has the financial, technical and managerial background and resources to provide the proposed services. The City Administrator or his designee may require an applicant to provide additional information reasonably needed to determine

whether the applicant can meet the cable TV needs and interests of the City and its citizens.

- (b) Completeness of Application. The City Administrator or his designee shall accept, reject as incomplete or deficient, or accept with conditions, the application. Within sixty (60) days of receipt of the application, the City Administrator or his designee shall notify applicant as to any facial deficiencies. Upon acceptance or, if accepted with conditions, upon the conditions being met, the City shall advertise the public hearing at which the City will consider the application and shall notify existing grantees of the application. Citizens and other grantees in the City may obtain copies of the application upon payment for the reasonable costs of reproduction thereof. Existing grantees and citizens shall be given an opportunity to submit relevant comments on the application and the applicant and the advertisement shall provide at least a thirty-day period for the submission of such material to the City. The public hearing shall commence after acceptance of the application by the City Administrator or his designee, or if accepted with conditions, after all conditions are met, but in no event sooner than thirty (30) days following the date on which written comments are due.
- (c) Summary Report. The City Administrator or his designee shall issue, or cause to be issued, a report summarizing the application which shall contain a recommendation to the City as to approval, denial, or approval with conditions. The City may obtain a consultant to perform studies and reviews to assist in the review of the application. In the event an application is filed proposing a franchise area which overlaps, in whole or in part, an existing grantee's franchise service area, a consultant's report shall be obtained to address the factors set forth in Section 16- 27-42(b) of this chapter.

16-27-42. Consideration of New Franchise Application by Franchise Authority.

- (a) General Evaluation Criteria by Franchise Authority.

The City may consider the information and criteria set forth in this chapter, and any other information it deems appropriate in determining whether to award a franchise.
- (b) Evaluation Criteria-Desirability of an Additional grantee. In the event an application is filed proposing a franchise area which overlaps, in whole or in part, an existing grantee's franchise area, the City, in considering such application, shall take into account: (1) the availability of space on existing poles and conduits; (2) the likelihood that more than one grantee can maintain financially feasible operations over an extended period of time so as to provide long-term benefits to subscribers; (3) the impact on the financial and operating capability of existing grantee; (4) the ability of the City to regulate an additional grantee; (5) the disruption of public and private property by the additional grantees; (6) the

loss of uniformity of service as may be provided by a single grantee; (7) the ability of multiple grantees to ensure the ability of high- quality cable service and other public benefits to the greatest number of City's residents at the lowest economically feasible price; and (8) whether access to cable service is likely to be denied to certain potential subscribers based on the income of residents of a particular area.

- (c) Action by City. Upon consideration of such relevant information and completion of the public hearing process, the City may reject the application, or award a franchise with or without conditions.
- (d) Performance Bond. Upon acceptance of the franchise, applicant shall post a corporate surety bond with the City in the amount of \$1,000,000.00 to secure the faithful performance by applicant of all obligations under the franchise, or such other amount as the City shall determine as reasonable to insure the performance by the grantee of the requirements of this chapter. Where such franchise overlaps the service area of an existing grantee, such franchise shall be conditioned upon the applicant's agreement to indemnify all existing grantees with respect to any damage to plant, or disruption, operation or maintenance of applicant's facilities.

16-27-43. Grant Procedure.

All new franchise applications and renewal applications subject to State and Federal law when filed shall be available for public inspection at places designated by the City. Information reasonably identified by the grantee as "proprietary and confidential" shall not be disclosed by the City without grantee's consent. No later than 90 days after the final date for filing applications, one or more public hearings shall be held on the application. The decision shall be made by the City not later than 90 days after the conclusion of all such public hearings based upon an evaluation of the application(s), the hearings, and other information that the City may deem relevant. The City may grant or may decline to grant any franchise.

16-27-44. Miscellaneous provisions.

- (a) Preemption. If any Federal or State body or agency shall preempt and supersede or preclude the jurisdiction of the City, the jurisdiction of the City shall cease while such jurisdiction is preempted, superseded or precluded.
- (b) Actions of the City. In any action by the City or representative thereof mandated or permitted under the terms hereof, such party shall act in a reasonably expeditious and timely manner. Furthermore, in any instance where approval or consent is required under the terms hereof, such approval or consent shall not be unreasonably withheld.
- (c) Severability. If any section, sentence, paragraph, term or provision hereof is for any reason determined to be illegal, invalid, superseded by other authority or unconstitutional by any court of competent jurisdiction or by any State or Federal regulatory authority having jurisdiction thereof, such portion shall be deemed a

separate, distinct, and independent provision and such determination shall have no effect on the validity of any other section, sentence, paragraph, term or provision hereof, all of which will remain in full force and effect for the term of the franchise or any renewal or renewals thereof.

- (d) Comply with Laws. Grantee shall comply with all Federal, State and municipal laws and ordinances applicable to the operation of its franchise.
- (e) City Rules. The City may adopt, in addition to the provisions contained in this chapter and other applicable ordinances including, but not limited to Chapters 16-27 and 16-28 of this code, such additional regulations as it may find necessary in the exercise of the police power, including rules and requirements for customer service, provided that such regulations do not materially conflict or interfere with grantee's rights granted herein. Any such additional regulations shall be reasonably designed to meet the purposes of this chapter and shall be adopted only after notice and comment are provided.
- (f) Force Majeure. The grantee shall not be held in default or noncompliance with the provisions of the chapter, nor suffer any enforcement or penalty relating thereto, where such non-compliance or alleged defaults are caused by strikes, acts of God, power outages, or other events beyond its reasonable ability to control.
- (g) Applicability to Existing Franchise. This Chapter shall apply to an existing franchise or grantee only to the extent allowed by Federal and State law.
- (h) Periodic Review. This subsection (h) is adopted to improve communications with and by the grantee.
 - (1) The City may require review sessions with representatives of the Grantee within thirty (30) days before and thirty (30) days after each of the anniversary dates of the franchise, or after the adoption of State or Federal legislation affecting the rights or duties of municipalities or cable operators in respect to the operation of cable television systems.
 - (2) All period review sessions shall be open to the public. Notice of the review sessions shall be published in a newspaper of general circulation in Sandy City.
 - (3) Topics which may be discussed at any review sessions include, but are not limited to, new Federal or State legislation, FCC rulings, rates, customer service, application of new technologies, system performance, programming offered, access channels, facilities and support, municipal uses of cable, customer complaints, amendments to the franchise, judicial rulings, and line extension policies.
 - (4) During a review by the City, the grantee shall fully participate and cooperate with the City and shall provide without cost information and documents which

the City reasonably requests to perform its review.

- (5) As a result of a period review sessions, the City and Grantee may agree to modify or otherwise review the franchise.

Chapter 28 CABLE COMMUNICATIONS SERVICE STANDARDS

16-28-1. Purpose.

The purpose of this chapter is to regulate in the public interest, the service standards of cable communication systems within the City, in order to ensure that the service provided to subscribers within the City by cable television companies is reasonably sufficient to meet community needs.

16-28-2. Short title.

This chapter shall constitute the "Cable Television Service Standards Ordinance" of the City and may be referred to as such.

16-28-3. Definition of terms.

For the purposes of this chapter, the following terms, phrases, words, abbreviations and derivations shall have the following meaning. Terms not defined in this chapter shall have the meaning defined in the master cable communication ordinance. When not inconsistent with the context, words used in the present tense shall include the future tense, words in the plural number include the singular number and words in the singular number include the plural number.

- (a) "Cable service" means:
 - (1) The one-way transmission to subscribers of video programming or other programming services; and
 - (2) Any subscriber interaction required for the selection of such video programming or other programming service.
- (b) "Abandoned calls" means telephone calls that are connected to the grantee's general information number but the caller hangs up without being attended by a representative of the grantee or a device capable of problem resolution (e.g. placing a service request, placing a work order, directing a call to appropriate personnel, etc.). "Abandoned calls" shall in no event be deemed to include calls in which the caller hangs up within forty-five seconds of making the call.
- (c) "Business hours" means at least eight hours between 8:00 a.m. through 7:00 p.m. Monday through Friday, provided that at least one hour must be between 5:00 p.m. and 7:00 p.m., and at least five hours between 8:00 to 5:00 Saturdays, except on legal holidays of the State of Utah.

16-28-4. Requirements.

- (a) Grantee shall maintain an office within 15 miles of the City where complaints and

requests for repairs, adjustments, or billing matters may be received during business hours. The current local telephone number(s) for the office and complaint service shall be listed in telephone directories distributed in grantee's service area.

- (b) Grantee shall maintain an accurate and reasonably complete written record or "log" of system failures and customer complaints describing the date and nature of the action taken by grantee, and the resolution of the problem, and other data on requirements of Sections 16-28-5 and 16-28-6 collected or recorded by the grantee. These records shall be kept at grantee's local office for a period of at least three years and shall be available for inspection by the City during regular business hours.

16-28-5. System service standards.

- (a) Grantee shall limit system failures to a minimum time duration by locating and commencing repair promptly. Grantee will generally respond to subscriber outages by the next business day, and if the problem is caused by grantee's equipment, it shall commence the repair by the next business day from the time a complaint is received and shall prosecute the repair promptly to completion where reasonably possible. In the event of a major system outage, however, such as where a majority of subscribers are without picture in twenty-five percent or more of the service area, grantee will respond to such outages within twenty-four hours after occurrence, irrespective of holidays or non-business hours.
- (b) Grantee shall render efficient service making system repairs promptly, and interrupting service only for good cause and for the shortest time reasonably possible. Planned interruptions, insofar as possible, shall be preceded by twenty-four hours notice to subscribers, and shall occur during periods of minimum viewership.
- (c) Subscribers shall not be required to pay for pay-per-view services for any service or significant part thereof which the customer fails to receive due to a failure of grantee's system or equipment. Subscriber shall be granted upon request a credit for interrupted service which exceeds four hours in any 24-hour period. The credit shall equal a prorated amount of the subscriber's total monthly bill for basic and optional or additional service and the total number of hours that the service is interrupted in excess of the four hours. For purposes of this subsection (c), the 24-hour period shall be counted from the receipt of notice from the customer of service interruption or degradation.

16-28-6. Subscriber service standards.

- (a) All calls to the general information number shall be answered by an operator or a device identifying the grantee at all hours all days of the year. Grantee's officers and employees shall be polite and reasonably responsive to all subscribers,

persons and inquirers who contact grantee.

- (b) Subject to Section 16-28-9, eighty-five percent of all customer calls shall be attended within three minutes by a representative of the grantee or a device capable of problem resolution.
- (c) The rate of abandoned calls shall be less than fifteen percent.
- (d) Ninety-five percent of all customer installations shall be completed within fifteen working days (unless the customer requests a later date).
- (e) Ninety-five percent of all repair and installation appointments shall be met by grantee on the appointed date, unless satisfactory arrangements are otherwise made with the subscriber. An appointment shall be considered to have been met by grantee if the subscriber fails to be present to allow grantee access on the appointed day and grantee confirms such absence by calling the subscriber's home telephone.
- (f) The grantee shall provide the information required to monitor the standards in this section to the franchise authority on a quarterly basis except that if the grantee has no means of tracking abandoned calls, and if doing so will be a substantial expense, then it shall not be required to do so. The grantee shall be excused for not achieving these standards during periods when conditions exist which are outside of its reasonable ability to control, or when there are system interruptions, outages, or other activities designed to maintain or improve cable service or the system. The grantee shall notify the franchise authority in advance of any maintenance or improvement activity which grantee claims will make attainment of the standards impracticable.
- (g) System staffing and equipment shall be such that not more than seven percent (7%) of telephone calls shall receive a busy signal on all grantee's incoming telephone lines during business hours in any calendar month except for a showing of good cause beyond grantee's reasonable control.

16-28-7. Notice and opportunity to cure.

- (a) In the event the grantee violates one or more material terms, conditions or provisions of this chapter, including but not limited to, Sections 16-28-5 and 16-28-6, the City shall give the grantee written notice detailing the nature of the alleged noncompliance. For violations of Section 16-28-6, the grantee shall have fifteen business days to cure the default, or if the default cannot reasonably be cured within fifteen business days, then the grantee shall have thirty days to initiate reasonable steps to remedy the default and notify the City of the steps being taken and the projected date that they will be completed. After initiating a remedy for a default, grantee shall prosecute the completion of the project through within a reasonable time. If the grantee disputes the assertion of noncompliance, it must notify the City in writing within five business days of the original notice,

stating that it disagrees with the assertion of noncompliance, giving with particularity the reasons for disagreement.

- (b) The Mayor or the Mayor's designee shall hear grantee's dispute at an executive hearing to be held in a timely manner.
- (c) Upon a determination by the Mayor or the Mayor's designee that a violation exists, grantee shall have ten business days to cure the default or to take reasonable steps to remedy the default if it cannot be cured within ten business days.
- (d) In the event that grantee fails to respond to the notice described in Section 16-28-7(a), or in the event that the default is not remedied within the time required, the City may, without further notice and in addition to any other applicable remedies, implement and collect the daily fines pursuant to Section 16-28-8.
- (e) Should a subscriber have an unresolved complaint regarding the quality of cable service, equipment, or the matters contained in Chapters 16-27, 16-28 of this Code directly affecting the subscriber's service, then upon request for a meeting with the City and the grantee, the City representative appointed for such purpose may, at the City's discretion, request a meeting with the subscriber and a representative of the grantee. The grantee shall then meet with the City representative and the subscriber within 30 days of receiving the request from the City at a time and place reasonably convenient to all parties.

16-28-8. Enforcement.

- (a) For violation of a term of this chapter, subject to the provisions of Section 16-28-7, the grantee shall pay a fine determined by the City up to two hundred fifty dollars per day, or part thereof, for the first day that such violation continues from and after implementation of the daily fines, pursuant to Section 16-28-7(d). The fine shall increase weekly up to an amount determined by the City of an additional two hundred fifty dollars per day to a maximum of one thousand dollars per day. Grantee shall pay the fine or penalty directly or by notifying the City to draw down the security deposit held by the City pursuant to the cable communication ordinance. If the grantee fails to pay the penalty or notify the City to draw down on the security deposit within seven days of notification of the implementation of daily fines, the City may proceed immediately to draw down on the security deposit.
- (b) Nothing contained in this chapter shall preclude the exercise of any other right or remedy of the City available at law or equity.
- (c) Grantee shall have a reasonable time from the time of the renewal of a franchise hereunder up to a year to comply with the provisions of this chapter.

16-28-9. Three-year review and modification.

- (a) Every three years after the adoption of the ordinance codified in this chapter, the City and grantee shall undertake a survey within the service area of cable subscribers designed to measure cable subscriber satisfaction of the customer service practices of the grantee. Such survey shall be at grantee's sole expense, in a form mutually acceptable to the City and grantee.
- (b) In the event that the survey demonstrates that the customer service practices set forth in Section 16-28-6(b) hereof are insufficient to meet the reasonable community needs in light of the anticipated costs thereof, then the percentage set forth in Section 16-28-6 relating to the attending of customer calls shall automatically be deemed to increase by an amount sufficient to meet such community needs. It shall be a rebuttable presumption that such percentage increase shall be three percent for each three-year review period. In no event will the percentage in Section 16-28- 6(b) be greater than ninety percent.
- (c) Nothing in this chapter shall limit the City's and the grantee's ability to reduce the percentage set forth in Subsection 16-28-6(b) except that no reduction may be allowed below the eighty-five-percent initial standard. If, based upon the survey results, a decrease in such percentage is demonstrated to be sufficient to meet the community needs, upon a request of grantee, the City shall not unreasonably refuse to reduce such percentage.

16-28-10. Notices.

Any and all notices between to the City or the grantee herein provided for or permitted under this chapter or by law shall be in writing and shall be deemed duly served when deposited in the United States mail, certified, postage prepaid, return receipt requested, addressed to grantee or the City at the address of each at the time of the granting of a franchise, or at such other address specified by the City or the grantee in a notice given pursuant to this Section as the address for service of notice on it. For purposes of this section, the grantee's office shall include both its local and national office addresses. However, failure by the City to provide notice to both offices by inadvertence or neglect shall not be a basis for a claim against the City, or a defense against City action under this Chapter. If the grantee changes its address during the term of its franchise, then it shall publish in notice thereof in a newspaper of local general circulation at least twice.

16-28-11. Miscellaneous provisions.

- (a) Preemption. If any Federal or State body of agency shall preempt and supersede or preclude the jurisdiction of the franchise authority, the jurisdiction of the franchise authority shall cease while such jurisdiction is preempted, superseded or precluded.
- (b) Severability. If any section, sentence, paragraph, term or provision hereof is for any reason determined to be illegal, invalid, superseded by other authority or

unconstitutional by any court of common jurisdiction or by any State or Federal regulatory authority having jurisdiction thereof, such portion shall be deemed a separate, distinct, and independent provision and such determination shall have no effect on the validity of any other section, sentence, paragraph, term or provision hereof, all of which will remain in full force and effect for the term of the franchise or any renewal or renewals thereof.

- (c) Franchise Authority Rules. The City may adopt, in addition to the provisions herein contained in this and other applicable ordinances, such additional regulations as it may find necessary in the exercise of the police power. Any such additional regulations shall be reasonably designed to meet the purposes of this chapter and shall be adopted only after notice and comment are provided.
- (d) Applicability to Existing Franchise. This Chapter shall apply to an existing franchise or grantee only to the extent allowed by Federal and State law.

Chapter 29 CABLE COMMUNICATIONS FRANCHISE GRANT -- INSIGHT

16-29-1. Grant.

Having determined that the financial, legal, and technical ability of Insight Communications Company, LP, a Delaware limited partnership ("Insight"), whose local address is 9075 South 700 West

Sandy, Utah 84070, is reasonably sufficient to provide cable television to the community, Insight is hereby granted a nonexclusive franchise which authorizes Insight to construct, operate, and maintain a cable communications system in that part of Sandy City on the east side of the heavy line dividing the City between Insight and T.C.I. Cable Television of Utah, as shown on the map of the City in **Exhibit A**, attached hereto, except for service to the address of 713 East 10345 South, and except for service to, between, and along feeder cable serving the following addresses on Peony Way (725 East): 10106 S., 10118 S., 10128 S., 10138 S., 10148 S., 10158 S., 10168 S., 10178 S., 10188 S., 10198 S., 10208 S., 10218 S., 10228 S., 10238 S., 10248 S., 10258 S., 10268 S., 10278 S., 10288 S., 10298 S., 10308 S., 10318 S., 10328 S.; according to the requirements and privileges contained in the master cable communication ordinance, Chapter 16-27 of the Revised Ordinances of Sandy City (R.O.S.C.), the Cable Television Service Standards Ordinance, Chapter 16-28, R.O.S.C., and other related ordinances of the City as they may be amended from time to time.

16-29-2. Term.

The Insight franchise shall be for a term of fifteen (15) years from the effective date of the ordinance codified in this chapter unless lawfully terminated or extended pursuant to the cable communication ordinance or other related ordinances of the City.

16-29-3. Contract.

The City and Insight may enter into a franchise agreement mutually agreeable to the parties in lieu of subjecting Insight to the terms of this chapter, the cable communication ordinance and the cable television service standards ordinance.

16-29-4. Surety Bond in Lieu of Security Fund.

Pursuant to the terms of Subsection 26-37-30(d), grantee may post a surety bond reasonably acceptable to the City in lieu of the deposit of a security fund.

16-29-5. Services.

The initial service offerings of Insight and rates related thereto are attached to the ordinance codified in this chapter as Schedule 1 and on file in the office of the City Recorder. Nothing contained in the franchise grant shall be deemed to preclude Insight from adding,

deleting, modifying or otherwise offering or changing any of its services, channel locations, levels of service, or rates relating thereto throughout the term of the franchise.

16-29-6. Most Favored Franchise.

In the event that another cable television operator obtains a franchise from the City, any term of which is more favorable to that other operator than the terms of the franchise are to this grantee, then this grantee's franchise shall be modified to include such more favorable term, except for the following cases:

- (a) Where the more favorable term of the other franchise is specifically related to the other grantee's performance;
- (b) Where the more favorable term of the other franchise is specifically related to the cable-related community needs and interests of that grantee's service area;
- (c) Where the less favorable term of the franchise is specific to this grantee's performance or the community needs and interests of this grantee's service area.

16-29-7. Effective Date, Acceptance of Franchise.

- (a) Effective Date, Acceptance. The franchise, together with the rights, privileges and authority granted thereby, shall take effect and be in force immediately upon adoption by the City Council, and compliance by the grantee within ten (10) days hereof with the following requirements:
 - (1) Grantee shall file with the City Recorder an acceptance of the franchise grant and promise to comply with and abide by all of the provisions, terms and conditions of this Chapter, and Chapters 16-27 and 16-28 to the extent grantee may legally do so. Such acceptances and promises shall be in writing duly executed and sworn to, by or on behalf of grantee before a notary public or other officer authorized by law to administer oaths.
 - (2) Grantee shall file with the City a certificate of insurance required in Section 16-27-29.
- (b) No inducements, coercion. Grantee, by accepting the franchise, acknowledges that it has not been induced to accept the franchise by any understanding, promise or other statement, whether verbal or written, by or on behalf of the City concerning any term or condition of the franchise, nor by any coercion or threats.
- (c) Grantee accepts terms of franchise. Grantee, by acceptance of the franchise, acknowledges that it has thoroughly examined and is familiar with the terms and conditions of the franchise.

Chapter 30 CABLE COMMUNICATIONS FRANCHISE GRANT -- TCI

16-30-1. Grant.

Having determined that the financial, legal, and technical ability of TCI Cablevision of Utah, Inc., herein called "TCI", 1369 E. 10600 South, Sandy 84092, with a head corporate office address of P.O. 5630, Denver, Colorado 80217-5630, is reasonably sufficient to provide cable television to the community, TCI is hereby granted a nonexclusive franchise which authorizes TCI to construct, operate, and maintain a cable communications system in that part of Sandy City on the east side of the heavy line dividing the City between TCI just as Insight Communications Company, LP, ("Insight") or its successor in interest; and Insight provides service to the west side of the heavy line, as shown on the map of the City in **Exhibit A**, attached hereto, pursuant to Insight's franchise in Chapter 16-30, Revised Ordinances of Sandy City, except that TCI may provide cable service on the west side of the heavy line to Western Rehabilitation Institute located at 8074 S. 1300 E., according to the requirements and privileges contained in the master cable communication ordinance, Chapter 16-27 of the Revised Ordinances of Sandy City (R.O.S.C.), the Cable Television Service Standards Ordinance, Chapter 16-28, R.O.S.C., and other related ordinances of the City as they may be amended from time to time.

16-30-2. Effective Date, Term.

The effective date of the franchise shall be May 15, 1993. The TCI franchise shall be for a term of fifteen (15) years from the effective date of the ordinance codified in this chapter unless lawfully terminated or extended pursuant to the cable communication ordinance or other related ordinances of the City.

16-30-3. Contract.

The City and TCI may enter into a franchise agreement mutually agreeable to the parties in lieu of subjecting TCI to the terms of this chapter, the cable communication ordinance and the cable television service standards ordinance.

16-30-4. Surety Bond in Lieu of Security Fund.

Pursuant to the terms of Subsection 26-37-30(d), grantee may post a surety bond reasonably acceptable to the City in lieu of the deposit of a security fund.

16-30-5. Services.

The initial service offerings of TCI and rates related thereto are attached to the ordinance codified in this chapter as Schedule 1 and on file in the office of the City Recorder. Nothing contained in the franchise grant shall be deemed to preclude TCI from adding, deleting, modifying or otherwise offering or changing any of its services, channel locations, levels of

service, or rates relating thereto throughout the term of the franchise.

16-30-6. Most Favored Franchise.

In the event that another cable television operator obtains a franchise from the City, any term of which is more favorable to that other operator than the terms of the franchise are to this grantee, then this grantee's franchise shall be modified to include such more favorable term, except for the following cases:

- (a) Where the more favorable term of the other franchise is specifically related to the other grantee's performance;
- (b) Where the more favorable term of the other franchise is specifically related to the cable-related community needs and interests of that grantee's service area;
- (c) Where the less favorable term of the franchise is specific to this grantee's performance or the community needs and interests of this grantee's service area.

16-30-7. Effective Date, Acceptance of Franchise.

- (a) Effective Date, Acceptance. The franchise, together with the rights, privileges and authority granted thereby, shall take effect and be in force beginning May 15, 1993 at 12:01 a.m., provided that a summary of this ordinance be published in a local newspaper of general circulation as required by law, and provided that grantee comply within fifteen (15) days of the passage of this ordinance with the following requirements:
 - (1) Grantee shall file with the City Recorder an acceptance of the franchise grant and promise to comply with and abide by all of the provisions, terms and conditions of this Chapter, and Chapters 16-27 and 16-28 to the extent grantee may legally do so. Such acceptances and promises shall be in writing duly executed and sworn to, by or on behalf of grantee before a notary public or other officer authorized by law to administer oaths.
 - (2) Grantee shall file with the City a certificate of insurance required in Section 16-27-29, R.O.S.C.
- (b) No inducements, coercion. Grantee, by accepting the franchise, acknowledges that it has not been induced to accept the franchise by any understanding, promise or other statement, whether verbal or written, by or on behalf of the City concerning any term or condition of the franchise, nor by any coercion or threats.
- (c) Grantee accepts terms of franchise. Grantee, by acceptance of the franchise, acknowledges that it has thoroughly examined and is familiar with the terms and conditions of the franchise.

Chapter 31 INKEEPER LICENSE TAX

16-31-1. Inkeeper License Tax.

There is levied upon the business of every person, company, corporation, or other like and similar persons, groups or organizations, doing business in the City as motor courts, motels, hotels, inns or like, and similar public accommodations, an annual license tax equal to one and a half percent (1.5%) of the gross revenue derived from the rent for each and every occupancy of a suite, room or rooms, for a period of less than thirty days.

16-31-2. Gross Receipts.

For purposes of this section, gross receipts shall be computed upon the base room rental rate. There shall be excluded from the gross revenue, by which this tax is measured:

- (a) The amount of any sales or use tax imposed by the state of Utah or by any other governmental agency upon a retailer or consumer.
- (b) The amount of any transient room tax levied under authority of Chapter 31 of Title 17, Utah Code Annotated, 1953, as amended, or its successor.
- (c) Receipts from the sale or service charge for any food, beverage or room-service charges in conjunction with the occupancy of the suite, room or rooms, not included in the base room rate; and
- (d) Charges made for supplying telephone service, gas or electrical energy service, not included in the base room rate.

16-31-3. Exemptions to License Tax.

- (a) No license fee shall be imposed under this chapter upon any person:
 - (1) Engaged in business for solely religious, charitable, eleemosynary or other types of strictly nonprofit purpose who is tax exempt in such activities under the laws of the United States and the state of Utah; or
 - (2) Engaged in a business specifically exempted from municipal taxation and fees by the laws of the United States or the state.

16-31-4. Payments.

Payments should be remitted quarterly within 45 days after the end of the quarter.

Chapter 32 TELECOMMUNICATIONS RIGHTS-OF-WAY

DECLARATION OF FINDINGS AND INTENT; SCOPE OF ORDINANCE

16-32-1 Declaration of Finding and Intent.

(1) **Findings Regarding Rights-of-Way.** The City Council of Sandy City finds that the Rights-of-Way within the City:

(a) are critical to the travel and transport of persons and property in the business and social life of the City;

(b) are intended for public uses and must be managed and controlled consistent with that intent;

(c) can be partially occupied by the facilities of utilities and other public service entities delivering utility and public services rendered for profit, to the enhancement of the health, welfare, and general economic well-being of the City and its citizens; and

(d) are a unique and physically limited resource requiring proper management to maximize the efficiency and to minimize the costs to the taxpayers of the foregoing uses and to minimize the inconvenience to and negative effects upon the public from such facilities' construction, placement, relocation, and maintenance in the Rights-of-Way.

(2) **Finding Regarding Compensation.** The City finds that the right to occupy portions of the Rights-of-Way for limited times for the business of providing Telecommunications Services is a valuable use of a unique public resource that has been acquired and is maintained at great expense to the City and its taxpayers, and, therefore, the taxpayers of the City should receive fair and reasonable compensation for use of the Rights-of-Way.

(3) **Finding Regarding Local Concern.** The City finds that while Telecommunications Systems are in part an extension of interstate commerce, their operations also involve Rights-of-Way, municipal franchising, and vital business and community service, which are of local concern.

(4) **Finding Regarding Promotion of Telecommunications Services.** The City finds that it is in the best interests of its taxpayers and citizens to promote the rapid development of Telecommunications Services, on a nondiscriminatory basis, responsive to community and public interest, and to assure availability for municipal, educational and community services.

(5) **Findings Regarding Franchise Standards.** The City finds that it is in the interests of the public to Franchise and to establish standards for franchising Providers in a manner that:

(a) fairly and reasonably compensates the City on a competitively neutral and

non-discriminatory basis as provided herein;

(b) encourages competition by establishing terms and conditions under which Providers may use valuable public property to serve the public;

(c) fully protects the public interests and the City from any harm that may flow from such commercial use of Rights-of-Way;

(d) protects the police powers and Rights-of-Way management authority of the City, in a manner consistent with federal and state law;

(e) otherwise protects the public interests in the development and use of the City infrastructure;

(f) protects the public's investment in improvements in the Rights-of-Way; and

(g) ensures that no barriers to entry of Telecommunications Providers are created and that such franchising is accomplished in a manner that does not prohibit or have the effect of prohibiting Telecommunication Services, within the meaning of the Telecommunications Act of 1996 ("Act") [P.L. No. 96-104].

(6) **Power to Manage Rights-of-Way.** The City adopts this Telecommunications Ordinance pursuant to its power to manage the Rights-of-Way, pursuant to common law, the Utah Constitution and statutory authority, and receive fair and reasonable, compensation for the use of Rights-of-Way by Providers as expressly set forth by Section 253 of the Act.

16-32-2 Scope of Ordinance.

This Ordinance shall provide the basic local scheme for Providers of Telecommunications Services and Systems that require the use of the Rights-of-Way, including Providers of both the System and Service, those Providers of the System only, and those Providers who do not build the System but who only provide Services. This Ordinance shall apply to all future Providers and to all Providers in the City prior to the effective date of this Ordinance, whether operating with or without a Franchise as set forth in Section 16-32-45.

DEFINED TERMS

16-32-3 Excluded Activity.

(1) **Cable TV.** This Ordinance shall not apply to cable television operators otherwise regulated by Chapters 16 and 26, Title 16, of the Revised Ordinances of Sandy City, Utah (the "Cable Television Ordinance").

(2) **Wireless Services.** This Ordinance shall not apply to Personal Wireless Service Facilities regulated by Chapter 36, Title 15 of the Land Development Code of Sandy City, Utah 1996.

(3) **Provisions Applicable to Excluded Providers.** Providers excused by other law that prohibits the City from requiring a Franchise shall not be required to obtain a Franchise, but

all of the requirements imposed by this Ordinance through the exercise of the City's police power and not preempted by other law shall be applicable.

16-32-4 Definitions.

For purposes of this Ordinance, the following terms, phrases, words, and their derivatives shall have the meanings set forth in this Section, unless the context clearly indicates that another meaning is intended. Words used in the present tense include the future tense, words in the single number include the plural number, words in the plural number include the singular. The word "shall" and "will" are mandatory, and "may" is permissive. Words not defined shall be given their common and ordinary meaning.

(1) "Application" means the process by which a Provider submits a request and indicates a desire to be granted a Franchise to utilize the Rights-of-Way of all, or a part, of the City. An Application includes all written documentation, verbal statements and representations, in whatever form or forum, made by a Provider to the City concerning: the construction of a Telecommunications System over, under, on or through the Rights-of-Way; the Telecommunications Services proposed to be provided in the City by a Provider, and any other matter pertaining to a proposed System or Service.

(2) "City" means Sandy City, Utah.

(3) "Completion Date" means the date that a Provider begins providing Services to customers in the City.

(4) "Construction Costs" means all costs of constructing a System, including make ready costs, other than engineering fees, attorneys or accountants fees, or other consulting fees.

(5) "Control" or "Controlling Interest" means actual working control in whatever manner exercised, including, without limitation, working control through ownership, management, debt instruments or negative control, as the case may be, of the System or of a Provider. A rebuttable presumption of the existence of Control or a Controlling Interest shall arise from the beneficial ownership, directly or indirectly, by any Person, or group of Persons acting in concert, of more than thirty-five percent (35%) of any Provider (which Person or group of Persons is hereinafter referred to as "Controlling Person"). "Control" or "Controlling Interest" as used herein may be held simultaneously by more than one Person or group of Persons.

(6) "FCC" means the Federal Communications Commission, or any successor thereto.

(7) "Franchise" means the rights and obligations extended by the City to a Provider to own, lease, construct, maintain, use or operate a System in the Rights-of-Way within the boundaries of the City. Any such authorization, in whatever form granted, shall not mean or include: (i) any other permit or authorization required for the privilege of transacting and carrying on a business within the City required by the ordinances and laws of the City; (ii) any other permit, agreement or authorization required in connection with operations on Rights-of-Way or public property including, without limitation, permits and agreements for placing devices on or in poles, conduits or other structures, whether owned by the City or a

private entity, or for excavating or performing other work in or along the Rights-of-Way.

(8) "Franchise Agreement" means a contract entered into in accordance with the provisions of this Ordinance between the City and a Franchisee that sets forth, subject to this Ordinance, the terms and conditions under which a Franchise will be exercised.

(9) "Gross Revenue" includes all revenues of a Provider that may be included as gross revenue within the meaning of Chapter 26, Title 11 Utah Code annotated, 1953, as amended. In the case of any Provider not covered within the ambit of Chapter 26, Title 11, Utah Code Annotated, the definition of "Gross Revenue" shall be that set forth in the Franchise Agreement.

(10) "Infrastructure Provider" means a Person providing to another, for the purpose of providing Telecommunication Services to customers, all or part of the necessary System which uses the Rights-Of-Way.

(11) "Open Video Service" means any video programming services provided to any Person through the use of Rights-of-Way, by a Provider that is certified by the FCC to operate an Open Video System pursuant to sections 651, *et seq.*, of the Telecommunications Act (to be codified at 47 U.S.C. Title VI, Part V), regardless of the System used.

(12) "Open Video System" means the system of cables, wires, lines, towers, wave guides, optic fiber, microwave, laser beams, and any associated converters, equipment, or facilities designed and constructed for the purpose of producing, receiving, amplifying or distributing Open Video Services to or from subscribers or locations within the City.

(13) "Operator" means any Person who provides Service over a Telecommunications System and directly or through one or more Persons owns a Controlling Interest in such System, or who otherwise controls or is responsible for the operation of such a System.

(14) "Ordinance" or "Telecommunications Ordinance" means this Telecommunications Ordinance concerning the granting of Franchises in and by the City for the construction, ownership, operation, use or maintenance of a Telecommunications System.

(15) "Person" includes any individual, corporation, partnership, association, joint stock company, trust, or any other legal entity, but not the City.

(16) "Personal Wireless Services Facilities" has the same meaning as provided in Section 704 of the Act (47 U.S.C. 332(c)(7)(c)), which includes what is commonly known as cellular and PCS Services that do not install any System or portion of a System in the Rights-of-Way.

(17) "Provider" means an Operator, Infrastructure Provider, Resaler, or System Lessee.

(18) "PSC" means the Public Service Commission, or any successor thereto.

(19) "Resaler" refers to any Person that provides local exchange service over a System for which a separate charge is made, where that Person does not own or lease the underlying

System used for the transmission.

(20) "Rights-of-Way" means the surface of and the space above and below any public street, sidewalk, alley, or other public way of any type whatsoever, now or hereafter existing as such within the City.

(21) "Signal" means any transmission or reception of electronic, electrical, light or laser or radio frequency energy or optical information in either analog or digital format.

(22) "System Lessee" refers to any Person that leases a System or a specific portion of a System to provide Services.

(23) "Telecommunications" means the transmission, between or among points specified by the user, of information of the user's choosing (*e.g.*, data, video, and voice), without change in the form or content of the information sent and received.

(24) "Telecommunications System" or "System" means all conduits, manholes, poles, antennas, transceivers, amplifiers and all other electronic devices, equipment, Wire and appurtenances owned, leased, or used by a Provider, located in the Rights-of-Way and utilized in the provision of Services, including fully digital or analog, voice, data and video imaging and other enhanced Telecommunications Services. Telecommunications System or Systems also includes an Open Video System.

(25) "Telecommunications Service(s)" or "Services" means any telecommunications services provided by a Provider within the City that the Provider is authorized to provide under federal, state and local law, and any equipment and/or facilities required for and integrated with the Services provided within the City, except that these terms do not include "cable service" as defined in the Cable Communications Policy Act of 1984, as amended by the Cable Television Consumer Protection and Competition Act of 1992 (47 U.S.C. § 521, *et seq.*), and the Telecommunications Act of 1996. Telecommunications System or Systems also includes an Open Video System.

(26) "Wire" means fiber optic Telecommunications cable, wire, coaxial cable, or other transmission medium that may be used in lieu thereof for similar purposes.

FRANCHISE REQUIRED

16-32-5 Non-Exclusive Franchise.

The City is empowered and authorized to issue non-exclusive Franchises governing the installation, construction, operation, use and maintenance of Systems in the City's Rights-of-Way, in accordance with the provisions of this Ordinance. The Franchise is granted through a Franchise Agreement entered into between the City and Provider.

16-32-6 Every Provider Must Obtain.

Except to the extent exempted by federal or state law, every Provider must obtain a Franchise prior to constructing a Telecommunications System or providing Telecommunications

Services, and every Provider must obtain a Franchise before constructing an Open Video System or providing Open Video Services via an Open Video System and shall be subject to the customer service and consumer protection provisions applicable to the Cable TV companies. The fact that particular Telecommunications Systems may be used for multiple purposes does not obviate the need to obtain a Franchise for other purposes. By way of illustration and not limitation, a cable operator of a cable system must obtain a cable franchise, and, should it intend to provide Telecommunications Services over the same System, must also obtain a Telecommunications Franchise.

16-32-7 Nature of Grant.

A Franchise shall not convey title, equitable or legal, in the Rights-of-Way. A Franchise is only the right to occupy Rights-of-Way on a non-exclusive basis for the limited purposes and for the limited period stated in the Franchise; the right may not be subdivided, assigned, or subleased. A Franchise does not excuse a Provider from obtaining appropriate access or pole attachment agreements before collocating its System on the property of others, including the City's property. This section shall not be construed to prohibit a Provider from leasing conduit to another Provider, so long as the Lessee has obtained a Franchise.

16-32-8 Current Providers.

Except to the extent exempted by federal or state law, any Provider acting without a Franchise on the effective date of this Ordinance shall request issuance of a Franchise from the City within 90 days of the effective date of this Ordinance. If such request is made, the Provider may continue providing service during the course of negotiations. If a timely request is not made, or if negotiations cease and a Franchise is not granted, the Provider shall comply with the provisions of Section 16-32-37.

16-32-9 Nature of Franchise.

The Franchise granted by the City under the provisions of this Ordinance shall be a nonexclusive Franchise providing the right and consent to install, operate, repair, maintain, remove and replace its System on, over and under the Rights-of-Way in order to provide Services.

16-32-10 Regulatory Approval Needed.

Before offering or providing any Services pursuant to the Franchise, a Provider shall obtain any and all regulatory approvals, permits, authorizations or licenses for the offering or provision of such Services from the appropriate federal, state and local authorities, if required, and shall submit to the City upon the written request of the City evidence of all such approvals, permits, authorizations or licenses.

16-32-11 Term.

No Franchise issued pursuant to this Ordinance shall have a term of less than five (5) years or greater than fifteen (15) years. Each Franchise shall be granted in a nondiscriminatory

manner.

COMPENSATION AND OTHER PAYMENTS

16-32-12 Compensation.

As fair and reasonable compensation for any Franchise granted pursuant to this Ordinance, a Provider shall have the following obligations:

(1) **Application Fee.** In order to offset the cost to the City to review an Application for a Franchise and in addition to all other fees, permits or charges, a Provider shall pay to the City, at the time of Application, \$500 as a non-refundable Application fee. The Application fee shall also be paid when an amendment to an Application is filed with the City.

(2) **Franchise Fees.** The Franchise fee, if any, shall be set forth in the Franchise Agreement. The obligation to pay a Franchise fee shall commence on the Completion Date". The Franchise fee is offset by any business license tax or fee enacted by the City.

(3) **Excavation Permits.** The Provider shall also pay fees required for an excavation permit.

(4) **Timing.** Unless otherwise agreed to in the Franchise Agreement, all Franchise Fees shall be paid on a monthly basis within forty-five (45) days of the close of each calendar month.

(5) **Fee Statement and Certification.** Unless a Franchise Agreement provides otherwise, each fee payment shall be accompanied by a statement showing the manner in which the fee was calculated and shall be certified as to its accuracy.

(6) **Future Costs.** A Provider shall pay to the City or to third parties, at the direction of the City, an amount equal to the reasonable costs and expenses that the City incurs for the services of third parties (including but not limited to attorneys and other consultants) in connection with any renewal or Provider-initiated renegotiation, transfer, amendment or other modification of this Ordinance or a Franchise, provided, however, that the parties shall agree upon a reasonable financial cap at the outset of negotiations.

(7) **Taxes and Assessments.** To the extent taxes or other assessments are imposed by taxing authorities, other than the City on the use of the City property as a result of a Provider's use or occupation of the Rights-of-Way, the Provider shall be responsible for payment of its pro rata share of such taxes, payable annually unless otherwise required by the taxing authority. Such payments shall be in addition to any other fees payable pursuant to this Ordinance.

(8) **Interest on Late Payments.** In the event that any payment is not actually received by the City on or before the applicable date fixed in the Franchise, interest thereon shall accrue from such date until received at the rate charged for delinquent state taxes.

(9) **No Accord and Satisfaction.** No acceptance by the City of any fee shall be construed as an accord that the amount paid is in fact the correct amount, nor shall such acceptance of such fee payment be construed as a release of any claim the City may have for

additional sums payable.

(10) **Not in Lieu of Other Taxes or Fees.** The fee payment is not a payment in lieu of any tax, fee or other assessment except as specifically provided in this Ordinance, or as required by applicable law. By way of example, and not limitation, excavation permit fees are not waived and remain applicable.

(11) **Continuing Obligation and Holdover.** In the event a Provider continues to operate all or any part of the System after the Term of the Franchise, such operator shall continue to comply with all applicable provisions of this Ordinance and the Franchise, including, without limitation, all compensation and other payment provisions throughout the period of such continued operation, provided that any such continued operation shall in no way be construed as a renewal or other extension of the Franchise, nor as a limitation on the remedies, if any, available to the City as a result of such continued operation after the term, including, but not limited to, damages and restitution.

(12) **Costs of Publication.** A Provider shall assume any publication costs associated with its Franchise that may be required by law.

FRANCHISE APPLICATIONS

16-32-13 Franchise Application.

To obtain a Franchise to construct, own, operate, maintain or provide Services through any System within the City, to obtain a renewal of a Franchise granted pursuant to this Ordinance, or to obtain the City approval of a transfer of a Franchise, as provided in Subsection 16-32-26, granted pursuant to this Ordinance, an Application must be filed with City on a form designated by the City.

16-32-14 Application Criteria.

In making a determination as to an Application filed pursuant to this Ordinance, the City may, but shall not be limited to, request or consider the following:

(1) Obtaining an order from the PSC granting a Certificate of Convenience and Necessity, if any is necessary for Provider's offering of Services within the State of Utah.

(2) Certification of the Provider's financial ability to compensate the City for Provider's intrusion, maintenance and use of the Rights-of-Way during the Franchise term proposed by the Provider;

(3) Provider's Agreements to comply with the requirements of Section 6 of this Ordinance.

16-32-15 Franchise Determination.

The City, in its discretion, shall determine the award of any Franchise on the basis of these and other considerations relevant to the use of the Rights-of-Way, without competitive

bidding.

16-32-16 General Requirement.

No Provider shall receive a Franchise unless it agrees to comply with each of the terms set forth in this Section governing construction and technical requirements for its System, in addition to any other requirements or procedures specified by the City or the Franchise, including requirements regarding co-location and cost sharing. A Provider shall obtain an excavation permit, pursuant to the excavation ordinance, before commencing any work in the Rights-of-Way.

16-32-17 Quality.

All work involved in the construction, operation, maintenance, repair, upgrade and removal of the System shall be performed in a safe, thorough and reliable manner using materials of good and durable quality. If, at any time, it is determined by the FCC or any other agency granted authority by federal law or the FCC to make such determination, that any part of the System, including, without limitation, any means used to distribute Signals over or within the System, is harmful to the public health, safety or welfare, or quality of service or reliability, then a Provider shall, at its own cost and expense, promptly correct all such conditions.

16-32-18 Licenses and Permits.

A Provider shall have the sole responsibility for diligently obtaining, at its own cost and expense, all permits, licenses or other forms of approval or authorization necessary to construct, operate, maintain, upgrade or repair the System, including but not limited to any necessary approvals from Persons and/or the City to use private property, easements, poles and conduits. A Provider shall obtain any required permit, license, approval or authorization, including but not limited to excavation permits, pole attachment agreements, etc., prior to the commencement of the activity for which the permit, license, approval or authorization is required.

16-32-19 Relocation of the System.

(1) **New Grades or Lines.** If the grades or lines of any Rights-of-Way are changed at any time in a manner affecting the System, then a Provider shall comply with the requirements of the excavation ordinance.

(2) **The City Authority to Move System.** The City may, at any time, in case of fire, disaster or other emergency, as determined by the City in its reasonable discretion, cut or move any parts of the System and appurtenances on, over or under the Rights-of-Way of the City, in which event the City shall not be liable therefor to a Provider. The City shall notify a Provider in writing prior to, if practicable, but in any event as soon as possible and in no case later than the next business day following any action taken under this Section. Notice shall be given as provided in Section 16-32-42.

(3) **A Provider Required to Temporarily Move System.** A Provider shall, upon prior reasonable written notice by the City or any Person holding a permit to move any structure,

and within the time that is reasonable under the circumstances, temporarily move any part of its System to permit the moving of said structure. A Provider may impose a reasonable charge on any Person other than the City for any such movement of its Systems.

(4) **Rights-of-Way Change - Obligation to Move System.** When the City is changing a Rights-of-Way and makes a written request, a Provider is required to move or remove its System from the Rights-of-Way, without cost to the City. This obligation exists whether or not the Provider has obtained an excavation permit.

16-32-20 Protect Structures.

In connection with the construction, operation, maintenance, repair, upgrade or removal of the System, a Provider shall, at its own cost and expense, protect any and all existing structures belonging to the City. A Provider shall obtain the prior written consent of the City to alter any water main, power facility, sewerage or drainage system, or any other municipal structure on, over or under the Rights-of-Way of the City required because of the presence of the System. Any such alteration shall be made by the City or its designee on a reimbursable basis. A Provider agrees that it shall be liable for the costs incurred by the City to replace or repair and restore to its prior condition in a manner as may be reasonably specified by the City, any municipal structure or any other Rights-of-Way of the City involved in the construction, operation, maintenance, repair, upgrade or removal of the System that may become disturbed or damaged as a result of any work thereon by or on behalf of a Provider pursuant to the Franchise.

16-32-21 No Obstruction.

In connection with the construction, operation, maintenance, upgrade, repair or removal of the System, a Provider shall not unreasonably obstruct the Rights-of-Way of fixed guide way systems, railways, passenger travel, or other traffic to, from or within the City without the prior consent of the appropriate authorities.

16-32-22 Safety Precautions.

A Provider shall, at its own cost and expense, undertake all necessary and appropriate efforts to prevent accidents at its work sites, including the placing and maintenance of proper guards, fences, barricades, security personnel and suitable and sufficient lighting, and such other requirements prescribed by OSHA and Utah OSHA. A Provider shall comply with all applicable federal, state and local requirements including but not limited to the National Electric Safety Code.

16-32-23 Repair.

After written reasonable notice to the Provider, unless, in the sole determination of the City, an eminent danger exists, any Rights-of-Way within the City which are disturbed or damaged during the construction, operation, maintenance or reconstruction by a Provider of its System may be repaired by the City at the Provider's expense, to a condition as good as that prevailing before such work was commenced. Upon doing so, the City shall submit to such a Provider an itemized statement of the cost for repairing and restoring the Rights-of-Ways

intruded upon. The Provider shall, within thirty (30) days after receipt of the statement, pay to the City the entire amount thereof.

16-32-24 System Maintenance.

A Provider shall:

- (1) Install and maintain all parts of its System in a non-dangerous condition throughout the entire period of its Franchise.
- (2) Install and maintain its System in accordance with standard prudent engineering practices and shall conform, when applicable, with the National Electrical Safety Code and all applicable other federal, state and local laws or regulations.
- (3) At all reasonable times, permit examination by any duly authorized representative of the City of the System and its effect on the Rights-of-Way.

16-32-25 Trimming of Trees.

A Provider shall have the authority to trim trees, in accordance with all applicable utility restrictions, ordinance and easement restrictions, upon and hanging over Rights-of-Way so as to prevent the branches of such trees from coming in contact with its System.

FRANCHISE AND LICENSE NON-TRANSFERRABLE

16-32-26 Notification of Sale.

(1) **PCS Approval.** When a Provider is the subject of a sale, transfer, lease, assignment, sublease or disposed of, in whole or in part, either by forced or involuntary sale, or by ordinary sale, consolidation or otherwise, such that it or its successor entity is obligated to inform or seek the approval of the PSC, the Provider or its successor entity shall promptly notify the City of the nature of the transaction and, if applicable, request a transfer of the Franchise to the successor entity. A request for a transfer shall include a certification that the successor entity unequivocally agrees to all of the terms of the original Provider's Franchise Agreement.

(2) **Transfer of Franchise.** Upon receipt of a request to transfer a Franchise, the City designee, as provided in Subsection 16-32-34, may send notice approving the transfer of the Franchise to the successor entity. Such approval shall not be unreasonably withheld. If the City has reason to believe that the successor entity may not comply with this Ordinance or the Franchise Agreement, it may require an Application for the transfer. The Application shall comply with Sections 16-32-13 through 16-32-15.

16-32-27 If PSC Approval is No Longer Required.

If the PSC no longer exists, or if its regulations or state law no longer require approval of transactions described in Section 16-32-26, then the following events shall be deemed to be a sale, assignment or other transfer of the Franchise requiring compliance with Section 7.1: (i) the sale, assignment or other transfer of all or a majority of a Provider's assets to another Person; (ii)

the sale, assignment or other transfer of capital stock or partnership, membership or other equity interests in a Provider by one or more of its existing shareholders, partners, members or other equity owners so as to create a new Controlling Interest in a Provider; (iii) the issuance of additional capital stock or partnership, membership or other equity interest by a Provider so as to create a new Controlling Interest in such a Provider; or (iv) the entry by a Provider into an agreement with respect to the management or operation of such Provider or its System.

OVERSIGHT AND REGULATION

16-32-28 Insurance, Indemnity, and Security.

Prior to the execution of a Franchise, a Provider will deposit with the City an irrevocable, unconditional letter of credit or surety bond as required by the terms of the Franchise, and shall obtain and provide proof of the insurance coverage required by the Franchise. A Provider shall also indemnify the City as set forth in the Franchise.

16-32-29 Oversight.

The City shall have the right to oversee, regulate and inspect periodically the construction, maintenance, and upgrade of the System, and any part thereof, in accordance with the provisions of the Franchise and applicable law. A Provider shall establish and maintain managerial and operational records, standards, procedures and controls to enable a Provider to prove, in reasonable detail, to the satisfaction of the City at all times throughout the Term, that a Provider is in compliance with the Franchise. A Provider shall retain such records for not less than the applicable statute of limitations.

16-32-30 Maintain Records.

A Provider shall at all times maintain:

(1) On file with the City, a full and complete set of plans, records and "as-built" hard copy maps and, to the extent the maps are placed in an electronic format, they shall be made in electronic format compatible with the City's existing GIS system, of all existing and proposed installations and the types of equipment and Systems installed or constructed in the Rights-of-Way, properly identified and described as to the types of equipment and facility by appropriate symbols and marks which shall include annotations of all Rights-of-Ways where work will be undertaken. As used herein, "as-built" maps includes "file construction prints." Maps shall be drawn to scale. "As-built" maps, including the compatible electronic format, as provided above, shall be submitted within 30 days of completion of work or within 30 days after completion of modification and repairs. "As-built" maps are not required of the Provider who is the incumbent local exchange carrier for the existing System to the extent they do not exist.

(2) Throughout the Term, a Provider shall maintain complete and accurate books of account and records of the business, ownership, and operations of a Provider with respect to the System in a manner that allows the City at all times to determine whether a Provider is in compliance with the Franchise. Should the City reasonably determine that the records are not being maintained in such a manner, a Provider shall alter the manner in which the books and/or

records are maintained so that a Provider comes into compliance with this Section. All financial books and records which are maintained in accordance with the regulations of the FCC and any governmental entity that regulates utilities in the State of Utah, and generally accepted accounting principles shall be deemed to be acceptable under this Section.

16-32-31 Confidentiality.

If the information required to be submitted is proprietary in nature or must be kept confidential by federal, state or local law, upon proper request by a Provider, and to the extent permitted by law, such information shall be treated as a Protected Record within the meaning of the Utah Government Records Access and Management Act ("GRAMA"), making it available only to those who must have access to perform their duties on behalf of the City, provided that a Provider notifies the City of, and clearly labels the information which a Provider deems to be confidential, proprietary information. Such notification and labeling shall be the sole responsibility of the Provider.

16-32-32 Provider's Expense.

All reports and records required under this Ordinance shall be furnished at the sole expense of a Provider, except as otherwise provided in this Ordinance or a Franchise.

16-32-33 Right of Inspection.

For the purpose of verifying the correct amount of the Franchise fee, the books and records of the Provider pertaining thereto shall be open to inspection or audit by duly authorized representatives of the City at all reasonable times, upon giving reasonable notice of the intention to inspect or audit the books and records. The Provider agrees to reimburse the City the reasonable costs of an audit if the audit discloses that the Provider has paid ninety-five percent (95%) or less of the compensation due the City for the period of such audit. In the event the accounting rendered to the City by the Provider herein is found to be incorrect, then payment shall be made on the corrected amount within thirty (30) calendar days of written notice, it being agreed that the City may accept any amount offered by the Provider, but the acceptance thereof by the City shall not be deemed a settlement of such item if the amount is in dispute or is later found to be incorrect.

RIGHTS OF CITY

16-32-34 Enforcement and Remedies.

(1) **Enforcement - City Designee.** The City is responsible for enforcing and administering this Ordinance, and the City or its designee, as appointed by the Mayor, is authorized to give any notice required by law or under any Franchise Agreement.

(2) **Enforcement Provision.** Any Franchise granted pursuant to this Ordinance shall contain appropriate provisions for enforcement, compensation, and protection of the public, consistent with the other provisions of this Ordinance, including, but not limited to, defining events of default, procedures for accessing the Bond/Security Fund, and rights of termination or

revocation.

16-32-35 Force Majeure.

In the event a Provider's performance of any of the terms, conditions or obligations required by this Ordinance or a Franchise is prevented by a cause or event not within a Provider's control, such inability to perform shall be deemed excused and no penalties or sanctions shall be imposed as a result thereof. For the purpose of this section, causes or events not within the control of a Provider shall include, without limitation, acts of God, strikes, sabotage, riots or civil disturbances, failure or loss of utilities, explosions, acts of public enemies, and natural disasters such as floods, earthquakes, landslides, and fires.

16-32-36 Extended Operation and Continuity of Services.

(1) **Continuation After Expiration.** Upon either expiration or revocation of a Franchise granted pursuant to this Ordinance, the City shall have discretion to permit or require a Provider to continue to operate its System or provide Services for an extended period of time not to exceed six (6) months from the date of such expiration or revocation. A Provider shall continue to operate its System under the terms and conditions of this Ordinance and the Franchise granted pursuant to this Ordinance.

(2) **Continuation by Incumbent Local Exchange Carrier.** If the Provider is the incumbent local exchange carrier, it may be permitted to continue to operate its System and provide Services without regard to revocation or expiration, but shall be obligated to negotiate a renewal in good faith.

16-32-37 Removal or Abandonment of Franchise Property.

(1) **Abandoned System.** In the event that (1) the use of any portion of the System is discontinued for a continuous period of twelve (12) months, and thirty (30) days after no response to written notice from the City to the last known address of Provider; (2) any System has been installed in the Rights-of-Way without complying with the requirements of this Ordinance or Franchise; or (3) the provisions of Section 16-32-9 are applicable and no Franchise is granted, a Provider, except the Provider who is an incumbent local exchange carrier, shall be deemed to have abandoned such System.

(2) **Removal of Abandoned System.** The City, upon such terms as it may impose, may give a Provider written permission to abandon, without removing, any System, or portion thereof, directly constructed, operated or maintained under a Franchise. Unless such permission is granted or unless otherwise provided in this Ordinance, a Provider shall remove within a reasonable time the abandoned System and shall restore, using prudent construction standards, any affected Rights-of-Way to their former state at the time such System was installed, so as not to impair their usefulness. In removing its plant, structures and equipment, a Provider shall refill, at its own expense, any excavation necessarily made by it and shall leave all Rights-of-Way in as good condition as that prevailing prior to such removal without materially interfering with any electrical or telephone cable or other utility wires, poles or attachments. The City shall have the right to inspect and approve the condition of the Rights-of-Way cables, wires,

attachments and poles prior to and after removal. The liability, indemnity and insurance provisions of this Ordinance and any security fund provided in a Franchise shall continue in full force and effect during the period of removal and until full compliance by a Provider with the terms and conditions of this Section.

(3) **Transfer of Abandoned System to City.** Upon abandonment of any System in place, a Provider, if required by the City, shall submit to the City a written instrument, satisfactory in form to the City, transferring to the City the ownership of the abandoned System.

(4) **Removal of Above-Ground System.** At the expiration of the term for which a Franchise is granted, or upon its revocation or earlier expiration, as provided for by this Ordinance, in any such case without renewal, extension or transfer, the City shall have the right to require a Provider to remove, at its expense, all above-ground portions of a System from the Rights-of-Way within a reasonable period of time, which shall not be less than one hundred eighty (180) days. If the Provider is the incumbent local exchange carrier, it shall not be required to remove its System, but shall negotiate a renewal in good faith.

(5) **Leaving Underground System.** Notwithstanding anything to the contrary set forth in this Ordinance, a Provider may abandon any underground System in place so long as it does not materially interfere with the use of the Rights-of-Way or with the use thereof by any public utility, cable operator or other Person.

OBLIGATION TO NOTIFY

16-32-38 Publicizing Work.

Before entering onto any private property, a Provider shall make a good faith attempt to contact the property owners in advance, and describe the work to be performed.

GENERAL PROVISIONS

16-32-39 Conflicts.

In the event of a conflict between any provision of this Ordinance and a Franchise entered pursuant to it, the provisions of this

shall control.

16-32-40 Severability.

If any provision of this Ordinance is held by any federal, state or local court of competent jurisdiction, to be invalid as conflicting with any federal or state statute, or is ordered by a court to be modified in any way in order to conform to the requirements of any such law and all appellate remedies with regard to the validity of the Ordinance provisions in question are exhausted, such provision shall be considered a separate, distinct, and independent part of this Ordinance, and such holding shall not affect the validity and enforceability of all other provisions hereof. In the event that such law is subsequently repealed, rescinded, amended or otherwise changed, so that the provision which had been held invalid or modified is no longer in

conflict with such law the provision in question shall return to full force and effect and shall again be binding on the City and the Provider, provided that the City shall give the Provider thirty (30) days, or a longer period of time as may be reasonably required for a Provider to comply with such a rejuvenated provision, written notice of the change before requiring compliance with such provision.

16-32-41 New Developments.

It shall be the policy of the City to liberally amend this Ordinance, upon Application of a Provider, when necessary to enable the Provider to take advantage of any developments in the field of Telecommunications which will afford the Provider an opportunity to more effectively, efficiently, or economically serve itself or the public.

16-32-42 Notices.

All notices from a Provider to the City required under this Ordinance or pursuant to a Franchise granted pursuant to this Ordinance shall be directed to the officer as designated by the Mayor. A Provider shall provide in any Application for a Franchise the identity, address and phone number to receive notices from the City. A Provider shall immediately notify the City of any change in its name, address, or telephone number.

16-32-43 Exercise of Police Power.

To the full extent permitted by applicable law either now or in the future, the City reserves the right to adopt or issue such rules, regulations, orders, or other directives that it finds necessary or appropriate in the lawful exercise of its police powers.

FEDERAL, STATE AND CITY JURISDICTION

16-32-44 Construction.

This Ordinance shall be construed in a manner consistent with all applicable federal and state statutes.

16-32-45 Ordinance Applicability.

This Ordinance shall apply to all Franchises granted or renewed after the effective date of this Ordinance. This Ordinance shall further apply, to the extent permitted by applicable federal or state law to all existing Franchises granted prior to the effective date of this Ordinance and to a Provider providing Services, without a Franchise, prior to the effective date of this Ordinance.

16-32-46 Other Applicable Ordinances.

A Provider's rights are subject to the police powers of the City to adopt and enforce ordinances necessary to the health, safety and welfare of the public. A Provider shall comply with all applicable general laws and ordinances enacted by the City pursuant to its police powers. In particular, all Providers shall comply with the City zoning and other land use

requirements.

16-32-47 City Failure to Enforce.

A Provider shall not be relieved of its obligation to comply with any of the provisions of this Ordinance or any Franchise granted pursuant to this Ordinance by reason of any failure of the City to enforce prompt compliance.

16-32-48 Construed According to Utah Law.

This Ordinance and any Franchise granted pursuant to this Ordinance shall be construed and enforced in accordance with the substantive laws of the State of Utah.

Chapter 33 MUNICIPAL ENERGY SALES AND USE TAX

16-33-1. Definitions.

(a) "Consumer" means a person who acquires taxable energy for any use that is subject to the Municipal Energy Sales and Use Tax.

(b) "Contractual Franchise Fee" means:

- (1) a fee;
 - (i) provided for in a franchise agreement; and
 - (ii) that is consideration for the franchise agreement; or
- (2) (i) a fee similar to subsection (b)(1); or
- (ii) any combination of subsections (b)(1) or (b)(2).

(c) (1) "Delivered Value" means the fair market value of the taxable energy delivered for sale or use in the municipality and includes:

- (i) the value of the energy itself; and
- (ii) any transportation, freight, customer demand charges, service charges, or other costs typically incurred in providing taxable energy in usable form to each class of customer in the municipality,

(2) "Delivered Value" does not include the amount of a tax paid under Part 1 or Part 2 of Chapter 12, Title 59 of the Utah Code Annotated.

(d) "Energy Supplier" means a person supplying taxable energy, except for persons supplying a de minimus amount of taxable energy, if such persons are excluded by rule promulgated by the State Tax Commission.

(f) "Franchise Agreement" means a franchise or an ordinance, contract, or agreement

granting a franchise.

(g) "Franchise Tax means:

- (1) a franchise tax
- (2) a tax similar to a franchise tax; or
- (3) any combination of subsections (1) or (2).

(h) "Person" includes any individual, firm, partnership, joint venture, association, corporation, estate, trust, business trust, receiver, syndicate, this state, any county, city, municipality, district, or other local governmental entity of the state, or any group or combination acting as a unit.

(i) "Sale" means any transfer of title, exchange, or barter, conditional or otherwise, in any manner, of taxable energy for a consideration. It includes:

- (1) installment and credit sales;
- (2) any closed transaction constituting a sale;
- (3) any transaction under which right to acquire, use or consume taxable energy is granted under a lease or contract and the transfer would be taxable if an outright sale were made.

(j) "Storage" means any keeping or retention of taxable energy in Sandy City for any purpose except sale in the regular course of business.

(k) (1) "Use" means the exercise of any right or power over taxable energy incident to the ownership or the leasing of the taxable energy.

(2) "Use" does not include the sale, display, demonstration, or trial of the taxable energy in the regular course of business and held for resale.

(l) "Taxable Energy" means gas and electricity.

16-33-2. Municipal Energy Sales and Use Tax.

There is hereby levied, subject to the provisions of this chapter, a tax on every sale or use of taxable energy made within Sandy City equaling six percent (6%) of the delivered value of the taxable energy to the customer. This tax shall be known as the Municipal Energy Sales and Use Tax.

a. The tax shall be calculated on the delivered value of the taxable energy to the consumer.

b. The tax shall be in addition to any sales or use tax on taxable energy imposed by Sandy City authorized by Title 59, Chapter 12, Part 2 of the Utah Code Annotated, The Local Sales and Use Tax Act.

16-33-3. Exemptions From the Municipal Energy Sales and Use Tax.

(a) No exemptions are granted from the Municipal Energy Sales and Use Tax except as expressly provided in Utah Code Ann. Section 10-1-305(2)(b):

(b) The following are exempt from the Municipal Energy Sales and Use Tax, pursuant to Utah Code Ann. Sec. 10-1-305(2)(b):

(1) Sales and use of aviation fuel, motor fuel, and special fuels subject to taxation under Title 59, Chapter 13 of the Utah Code Annotated;

(2) Sales and use of taxable energy that is exempt from taxation under federal law, the United States Constitution, or the Utah Constitution.

(3) Sales and use of taxable energy to a person, if the primary use of the taxable energy is for use in compounding or producing taxable energy or a fuel subject to taxation under Title 59, Chapter 13 of the Utah Code Annotated.

(4) Sales or use of taxable energy to a person, if the primary use of the taxable energy is for use in compounding or producing taxable energy or a fuel subject to taxation under Title 59, Chapter 13 of the Utah Code Annotated.

(5) Taxable energy brought into the state by a nonresident for the nonresident's own personal use or enjoyment while within the state, except taxable energy purchased for use in the state by a nonresident living or working in the state at the time of purchase;

(6) The sale or use of taxable energy for any purpose other than as a fuel or energy; and

(7) The sale of taxable energy for use outside the boundaries of Sandy City.

(c) The sale, storage, use, or other consumption of taxable energy is exempt from the Municipal Energy Sales and Use Tax levied by this Chapter, provided:

(1) The delivered value of the taxable energy has been subject to a municipal energy sales or use tax levied by another municipality within the state authorized by Title 59, Chapter 12, Part 3 of the Utah Code Annotated; and

(2) Sandy City is paid the difference between the tax paid to the other municipality and the tax that would otherwise be due under this Chapter, if the tax due under this Chapter exceeds the tax paid to the other municipality.

16-33-4. No Effect Upon Existing Franchises - Credit For Franchise Fees.

(a) This Chapter shall not alter any existing franchise agreements between Sandy City and energy suppliers.

(b) There is a credit against the tax due from any consumer in the amount of a

contractual franchise fee paid if:

- (1) the energy supplier pays the contractual franchise fee to Sandy City pursuant to a franchise agreement in effect on July 1, 1997;
- (2) the contractual franchise fee is passed through by the energy supplier to a consumer as a separately itemized charge; and
- (3) the energy supplier has accepted the franchise.

16-33-5. Tax Collection Contract With State Tax Commission.

(a) On or before the effective date of this Chapter, Sandy City shall contract with the State Tax Commission to perform all functions incident to the administration and collection of the Municipal Energy Sales and Use Tax, in accordance with this Chapter. This contract may be a supplement to the existing contract with the Commission to administer and collect the Local Sales and Use Tax, as provided in 16-2-6 of the Revised Ordinances of Sandy City. The Mayor is hereby authorized to enter agreements with the State Tax Commission that may be necessary to the continued administration and operation of the Municipal Energy Sales and Use Tax Ordinance enacted by this Chapter.

(b) An energy supplier shall pay the Municipal Energy Sales and Use Tax revenues collected from consumers directly to Sandy City monthly if:

- (1) Sandy City is the energy supplier; or
- (2)
 - (i) the energy supplier estimates that the municipal energy sales and use tax collected annually from its Utah consumers equals \$1,000,000 or more, and
 - (ii) the energy supplier collects the Municipal Energy Sales and Use Tax.

(c) An energy supplier paying the Municipal Energy Sales and Use Tax directly to Sandy City may deduct any contractual franchise fees collected by the energy supplier qualifying as a credit and remit the net tax less any amount the energy supplier retains as authorized by Sec. 10-1-307(4), Utah Code Annotated.

16-33-5. Incorporation of Part 1, Chapter 12, Title 59, Utah Code, Including Amendments.

(a) (1) Except as herein provided, and except insofar as they are inconsistent with the provisions of Title 10, Chapter 1, Part 3, Municipal Energy Sales and Use Tax Act, as well as this Chapter, all of the provisions of Part 1, Chapter 12, Title 59 of the Utah Code Annotated 1953, as amended, and in force and effect on the effective date of this Chapter, insofar as they relate to sales and use taxes, excepting Sections 59-12-101 and 59-12-119 thereof, and excepting for the amount of the sales and use taxes levied therein, are hereby adopted and made a part of this Chapter as if fully set forth herein.

- (2) Wherever to the extent that in Part 1, Chapter 12, Title 59, Utah Code

Annotated 1953, as amended, the State of Utah is named or referred to as the "taxing agency," the name of Sandy City shall be substituted, insofar as is necessary for the purposes of that part, as well as Part 3, Chapter 1, Title 10, Utah Code Annotated 1953, as amended. Nothing in this subparagraph (2) shall be deemed to require substitution of the name Sandy City for the word "state" when that word is used as part of the title of the State Tax Commission, or of the Constitution of Utah, nor shall the name of Sandy City be substituted for that of the State in any section when the result of such a substitution would require action to be taken by or against Sandy City or any agency thereof, rather than by or against the State Tax Commission in performing the functions incident to the administration or operation of this Chapter.

(3) Any amendments made to Part 1, Chapter 12, Title 59, Utah Code Annotated 1953, as amended, which would be applicable to Sandy City for the purpose of carrying out this Chapter are hereby incorporated herein by reference and shall be effective upon the date that they are effective as a Utah statute.

16-33-6. No Additional License to Collect the Municipal Energy Sales and Use Tax Required -- No Additional License or Reporting Requirements.

No additional license to collect or report the Municipal Energy Sales and Use Tax levied by this Chapter is required, provided the energy supplier collecting the tax has a license issued under Section 59-12-106, Utah Code Annotated.

Endnotes

1 (Popup - Popup)

Utah Supreme Court reversed summary judgment against Spanish Fork City re. its imposition of impact fees for sewer and water hookups. Presumption of constitutional validity applies to city's exercise of its legislative powers in establishing impact fees. Presumption can be attacked, but burden of proof is on the challenger. City may rely on reasonable estimates of costs of existing facilities and projections of future capital costs in establishing equitable impact fees. Seven factors in Banberry should be considered, but are not an end in and of themselves. Homebuilders Association of Utah v. American Fork, 361 Utah Adv. Rep. 46 (Utah 1999).

2 (Popup - Popup)

The "equitable share" standard is the ultimate legal standard municipalities are obligated to meet in limiting impact fees. Banberry factors are not mandatory, but merely illustrative. Homebuilders Assn. v. City of American Fork, 361 Utah Adv. Rep. 46 (SC, 1/26/99)